

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JOSE M. PADILLA, as the Special ) Docket No. 09 C 1222  
Administrator of the Estate of )  
MAXIMILIAN PADILLA, )  
Plaintiff, )  
v. ) Chicago, Illinois  
HUNTER DOUGLAS WINDOW ) August 21, 2013  
COVERINGS, INC., ) 10:00 o'clock a.m.  
Defendant. )

VOLUME 2  
TRANSCRIPT OF PROCEEDINGS - DAUBERT HEARING  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

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1 (Proceedings had in open court:)

2 THE CLERK: 09 C 1222, Padilla versus Hunter Douglas  
3 Window Coverings, for Daubert hearing.

4 MR. JAUREGUI: Good morning, your Honor. Appearing  
5 for the plaintiff, Arturo Jauregui and Ed Santiago.

6 MR. WILLIAMS: And good morning, your Honor. Jeff  
7 Williams and Brian Watson for Hunter Douglas.

8 THE COURT: Good morning, counsel.

9 So today we will proceed considering plaintiff's  
10 motion under Daubert to exclude testimonies of Joseph Sala as  
11 well as Rose Ray. First we will address the motion as to Mr.  
12 Sala. And as set forth in my schedule, defendants will have 60  
13 minutes to voir dire Mr. Sala. Plaintiffs will then have 60  
14 minutes. And defendants will have ten minutes redirect.

15 So you may proceed.

16 MR. WILLIAMS: Thank you, your Honor. At this time we  
17 would call Dr. Joseph Sala to the stand.

18 THE COURT: Please remain standing.

19 (Witness duly sworn.)

20 THE COURT: You may proceed.

21 JOSEPH SALA, DEFENDANT'S WITNESS, DULY SWORN

22 DIRECT EXAMINATION

23 BY MR. WILLIAMS:

24 Q. Dr. Sala, will you please state your name for the record?

25 A. Joseph Sala.

1 Q. And what do you do?

2 A. I am a human factors scientist.

3 Q. And where do you practice your occupation?

4 A. At the company known as Exponent.

5 Q. And what is Exponent?

6 A. Exponent is a scientific and engineering consulting firm.

7 Q. And how long have you been with them?

8 A. I have been with Exponent for approximately eight years  
9 now.

10 Q. And in what city?

11 A. In Philadelphia.

12 Q. You understand that we are here today for what we refer to  
13 shorthand as a Daubert hearing with respect to your proposed  
14 testimony in this case, on a motion that plaintiffs have filed  
15 with respect to it, is that right?

16 A. Yes.

17 Q. Okay. What I'd like to do, Dr. Sala, is start out by  
18 asking you to take us through briefly your educational  
19 background, in particular as it relates to your field of  
20 expertise.

21 MR. WILLIAMS: And, your Honor, if I may publish and  
22 offer to counsel and the Court a copy of what I marked as  
23 Exhibit 1, Dr. Sala's CV?

24 THE COURT: That's fine.

25 MR. WILLIAMS: Would your Honor like a copy?

1 THE COURT: Yes, please.

2 BY MR. WILLIAMS:

3 Q. So, Dr. Sala, this is something probably best handled by  
4 you without the need for too many questions. But as I say, I'd  
5 like you to focus on your post high school education and  
6 background leading to your employment as a human factors  
7 scientist.

8 A. Certainly. My educational career began at Rutgers  
9 University, Rutgers College, in New Jersey. I achieved a  
10 bachelor's of arts in psychology and a bachelor's of science in  
11 administration of justice from that institution.

12 Following a one-year hiatus, I then attended Johns  
13 Hopkins, or I was admitted to Johns Hopkins University to the  
14 psychological and brain sciences department, where I obtained  
15 both my master's and did my doctoral research, obtaining a  
16 Ph.D. in cognitive neuroscience.

17 Following my time at Johns Hopkins, I pursued post-  
18 doctoral studies and was granted a national research -- excuse  
19 me -- national research service award to continue my -- my  
20 post-doctoral education and training under a professor that was  
21 at Stanford University, and continued my research in cognitive  
22 neuroscience.

23 Q. How long were you at Stanford?

24 A. I was at Stanford for approximately a year and a half.

25 Q. Okay. And so that takes us up until 2005, is that right?

1 A. Approximately, yes.

2 Q. Okay. Have you published during the course of your career?

3 A. Yes, I have.

4 Q. And in particular, have you published in the field of  
5 generally speaking human factor science?

6 A. Yes, since -- since my time in graduate school, I have  
7 actively published in a variety of journals and presented at  
8 conferences, both national and international conferences.

9 Q. And how many publications in which you were the author or a  
10 co-author are contained in your current CV?

11 A. Roughly around 30.

12 Q. Okay. Are there any in particular -- and as I said we are  
13 going to go through this quickly -- that bear in particular  
14 detail on the subjects that you have been asked to consider and  
15 offer opinion testimony on here?

16 A. Yes. I have published a number of articles on warnings,  
17 warnings compliance research, looking at either the prevalence  
18 of on-product warnings across either products themselves or  
19 voluntary standards. I have published on the -- the advice and  
20 recommendations and sometimes requirements of various  
21 governmental agencies as it -- as it relates to the  
22 presentation of risks.

23 I have published on the various types of designs  
24 available for warnings, whether to communicate something  
25 through -- or the benefits and detriments of trying to

1 communicate safety information either through text or through  
2 text list sorts of designs. And then additionally, I've  
3 investigated people's behavioral response and acknowledgment of  
4 warnings.

5 Q. Have you ever published any papers with regard to the role  
6 of human factors and the design of consumer products?

7 A. Yes, I have.

8 Q. And can you direct our attention to representative example  
9 of them.

10 A. Certainly. If you look it's I believe the third -- the  
11 third citation down. Now it's the fourth or fifth, Sanders,  
12 Wood and Sala citation, human factors engineering for medical  
13 devices. This was a book chapter that I co-authored which  
14 involved incorporating human factor science and human factors  
15 engineering into the design of medical devices. How a medical  
16 device manufacturer may go about considering the field of human  
17 factors and the important aspects of the user into the actual  
18 design of their product.

19 Now, we authored this chapter in 2006. However, it's  
20 not on my -- my CV yet. We have just updated this chapter and  
21 done a significant revision to it, which is -- which will be  
22 published I believe this -- later this year.

23 Q. Okay. What is ergonomics?

24 A. Ergonomics is very akin to human factors. It's another --  
25 think basically it's used almost interchangeably with the field

1 of human factors. It's the fit of the user into the  
2 environment, and the appropriateness of certain products and  
3 how -- what -- what products afford a user.

4 Q. Have you published in the area of ergonomics to the extent  
5 there is any difference there or distinction between human  
6 factors and ergonomics?

7 A. I think that they are largely synonymous.

8 Q. Okay. So you said you were at Stanford until roughly 2005.  
9 During the course of your career, have you become a member of  
10 any professional organizations, in particular ones that are  
11 relevant to your qualifications here?

12 A. Yes. I have -- through my career I have been a member of a  
13 number of professional affiliations, like the Society of  
14 Neuroscience and the Association of Psychological Sciences.  
15 These are organizations that our field contributes to --  
16 psychology and cognitive neuroscience contributes to human  
17 factors.

18 But since joining Exponent and since leaving academia,  
19 I've also joined professional societies, such as the Human  
20 Factors and Ergonomics Society, the Society for Risk Analysis.  
21 And again missing from this professional affiliation but also  
22 the Society for Automotive Engineering, because obviously there  
23 is a lot to consider with respect to human factors in driver  
24 behavior, driver perceptions, in vehicle systems.

25 Q. Okay. After you got out of Stanford or finished your

1 fellowship there, what did you do next?

2 A. Following Stanford I took employment with Exponent.

3 Q. And was that in Philadelphia originally?

4 A. No. The headquarters for Exponent is in Mendel Park, which  
5 is luckily the same town as Stanford. I went and worked at the  
6 Mendel Park office for approximately a year and a half.

7 Q. And then made the move to Philadelphia?

8 A. Correct.

9 Q. And what is your position in the Philadelphia office of  
10 Exponent?

11 A. I am a principal scientist in the human factors practice as  
12 well as the office director for the Philadelphia office.

13 Q. Okay. Do you currently do any lecturing or teaching of any  
14 sort?

15 A. Yes, I do.

16 Q. And what does that involve?

17 A. On a yearly basis I lecture at Drexel University. This is  
18 a class in the human factors aspects of medical device design.  
19 I give a lecture alongside the human factors staff of the FDA,  
20 Food and Drug Administration. Together we discuss and give  
21 lecture to a class of engineering students on how to  
22 incorporate human factors into the design of medical devices,  
23 and what the basics are that they need to consider and know  
24 from -- as engineers without the scientific training in my  
25 discipline.



1 Q. We don't have a medical device at issue in this case. But  
2 can you -- I am going to use the words summarize and briefly  
3 frequently in the next hour.

4 Can you briefly describe for us how human factors is  
5 involved in the design of medical devices?

6 A. Sure. The design of medical devices, the human factors  
7 aspects are very similar to the human factors aspects in design  
8 of many other devices. I -- its crux. It's considering the  
9 user, the needs, the limitations, and where a product is going  
10 to be used in the actual design.

11 So if you have a medical device -- and what we tell  
12 the students is that you want to know attributes of your user.  
13 You want to know who you're serving with your design and  
14 consider that.

15 You might be interested in the age of your user  
16 population. If it's a medical device that is serving certain  
17 diseased population, you want to know what constraints that  
18 disease places on the person. And you want to know previous  
19 history of failures so that you can consider these in the  
20 design.

21 Q. Okay. Are those principles in general ones that also you  
22 brought to bear on your analysis in this case?

23 A. Yes.

24 Q. So you joined Exponent in Mendel Park in 2005. You made  
25 the move to Philadelphia in 2007, is that right?

1 A. Approximately, yes.

2 Q. And you've been there ever since?

3 A. Yes.

4 Q. Okay. How do you spend your time at Exponent? Is it all  
5 consulting for litigation like we are doing here today?

6 A. No, approximately two thirds of my time is involved in  
7 assessing human factors aspects of accidents that have  
8 happened, and oftentimes litigation.

9 Q. And what's the other third comprised of?

10 A. The other third is consulting largely with manufacturers as  
11 to how to incorporate human factors into the design or the  
12 consideration of their products that they are either bringing  
13 onto the market or already have on the market.

14 Q. Okay. So you're working directly with manufacturers or  
15 potential manufacturers of products including consumer  
16 products?

17 A. Yes.

18 Q. Okay. Have you ever been involved in advising clients with  
19 respect to products that either relate to children or have  
20 anything to do with safety of children?

21 A. Yes. One of my areas of focus and particular areas of  
22 expertise is in fact child products and child safety. I have  
23 consulted on the design of a range of child products. I --  
24 including products that are meant to aid in -- in child safety,  
25 like cabinet latches and toilet seat covers, devices that you

1 can add to your home to help control the environment.

2 Also I have consulted on devices such as car seats,  
3 the design of car seats and aspects of car seats. The --  
4 finally also for -- certain of my consultation is related to  
5 toys and what product children entertain themselves with, to  
6 make sure that there are no hazards that are un -- are not  
7 considered.

8 Q. Okay. Now, have you ever consulted with respect to the  
9 physical design, the mechanical workings, of any window  
10 covering products?

11 A. No, I have not.

12 Q. Have you ever provided advice with respect to warnings on  
13 window covering products?

14 A. Yes, I have.

15 Q. And can you describe without disclosing, you know -- didn't  
16 involve Hunter Douglas, correct?

17 A. No, it did not.

18 Q. Can you describe without disclosing your client the nature  
19 of your work in that area?

20 A. Certainly. I worked with a window covering manufacturer to  
21 review the product inserts and the safety information that they  
22 included with their product, hoping to perhaps streamline their  
23 presentation of information, as well as to provide additional  
24 information in their installation instructions, whether it be  
25 instructions that would aid the user, but also effect the

1 safety and installation of the product.

2 Q. When was this, what year?

3 A. That was approximately, if my memory serves, around 2008.

4 Q. Okay. All right. You described yourself as a human  
5 factors scientist. And in connection with the purpose of  
6 today's proceedings, I've asked you to come prepared to  
7 describe for the Court exactly what's involved in your  
8 discipline in general, and then in particular how you applied  
9 the scientific methodology of human factors to your work in  
10 this case.

11 Is that a fair summary?

12 A. Yes.

13 Q. And have you at my request prepared something to assist the  
14 Court and counsel in that process?

15 A. Yes, I have.

16 MR. WILLIAMS: Your Honor, I am told at this time I  
17 should request that you toggle us to laptop input. And I will  
18 get off the camera.

19 (Brief pause.)

20 MR. WILLIAMS: Your Honor, I have marked as Exhibit 3,  
21 even though we can all see it, I have hard copies for counsel  
22 and the Court, of a 12 page PowerPoint presentation that Dr.  
23 Sala would use. Would you like a copy?

24 THE COURT: Yes, please.

25 MR. WILLIAMS: Your Honor, I just realized I in

1 setting up today neglected to hand this to counsel ahead of  
2 time. I am going to wait for a second and give him a chance to  
3 look through it and see if he has any questions before we get  
4 started.

5 (Brief pause.)

6 THE COURT: By the way, for future reference to both  
7 sides, these screens that counsel have at the podium as well as  
8 the witness are touch sensitive. So witnesses can either mark  
9 on them or indicate by just touching. It will also show up if  
10 they want to highlight particular parts of the document.

11 The one caveat I have is that for the witness screen  
12 for some reason, because of the way it's calibrated, you have  
13 to touch about half an inch to the left of where you actually  
14 want the mark to be. I have --

15 THE WITNESS: Product of a human factors expert.

16 THE COURT: I have run across this numerous occasions  
17 at trials and at hearings. So just keep this in mind as we  
18 proceed with the case and the trial of this case.

19 MR. WILLIAMS: I am glad it's the witness's and not  
20 counsel's.

21 MR. JAUREGUI: Your Honor, I had a chance to peruse  
22 this PowerPoint presentation that Mr. Williams is about to use.  
23 I wish to inform the Court, as Mr. Williams correctly points  
24 out, I have never been provided with a copy of this document.  
25 I don't think it is fair to me at this point that he is going

1 to be using this document.

2 Specifically somewhere along page 7, there is a  
3 document there that says: Human factors considerations for  
4 vertical blinds. And it contains some information here. I had  
5 asked him during his deposition whether or not he looked at any  
6 data and studies, any work related to window coverings as they  
7 relate to the use of vertical blinds. And he said no.

8 So now this is totally new that is being thrown at us  
9 at the last minute in a very surprising manner.

10 MR. WILLIAMS: Your Honor, it was thrown at them about  
11 five minutes later than I should have. We got much more  
12 quantity of information from them yesterday that they used.  
13 Didn't object to it. If he has any concerns as we go along, I  
14 am happy to have him object to or cross-examination.

15 But this is for the Court's purpose, not a jury.

16 THE COURT: And, yes. The whole purpose of yesterday  
17 and today was purpose of voir dire. And so it really is  
18 basically all an offer of proof as to what the parties think  
19 the expert will testify to, and then an opportunity for the  
20 other side to cross-examine as to qualifications and the  
21 Daubert issues that arise from those expert opinions. And so  
22 that's why we are doing it now as opposed to before a jury at  
23 the jury trial.

24 I think that for my purposes it's useful to have  
25 counsel present whatever information they think supports their

1 position. And then the other side can have an opportunity to  
2 cross-examine. However, I am going to, of course, allowing --  
3 just by simply allowing an exhibit to be used or testimony to  
4 be taken for purposes of the proffer does not mean at all that  
5 I am determining that it can be presented to the jury during  
6 the trial.

7 This again is for my benefit so that I can assess the  
8 issues raised by the parties in their motion.

9 MR. WILLIAMS: Thank you, your Honor.

10 BY MR. WILLIAMS:

11 Q. Dr. Sala, if you would, taking a look at the first of the  
12 12 slides that I think you prepared for us today. Could you  
13 explain for us in your words what human factors science is, and  
14 in particular, because I really do want to tie this hour that  
15 we have to this case, what role human factors plays in the  
16 design of consumer products.

17 A. Certainly. What I have listed here is a fairly concise  
18 definition of human factors. Basically that the human factors  
19 is the scientific study of how our capabilities and limitations  
20 affect the way in which we use products, and how that can  
21 affect the safety, that this definition is fairly dense, and I  
22 can attempt to unpack it in the next few slides.

23 Q. Okay.

24 A. So first off, the -- as the definition states, human  
25 factors is a scientific study. There is science behind human

1 factors. It's -- this science is rooted in behavioral  
2 sciences, like the kind that I have been professionally trained  
3 and educated in. Cognitive and experimental psychology. And  
4 it has a history that as a field, put together under the human  
5 factors rubric, dates back to World War II.

6           The military where it was having issues where well-  
7 trained, long-trained pilots were crashing when attempting to  
8 land fighters, fighter jets. But the jets were passing all of  
9 the mechanical sort of investigations. And they couldn't  
10 explain the failure due to any mechanical cause.

11           They approached cognitive psychologists to help  
12 understand how the cockpit environment, including their  
13 displays, the stresses involved in flying this new type of  
14 plane, could affect the ability of fighter -- of the pilots to  
15 land their plane safely.

16 Q. So basically this is a field of study specifically known as  
17 human factors that's a creature of the last 60, 70 years?

18 A. Yes.

19 Q. Okay. Are there any governmental organizations and  
20 particular ones that are concerned with safety that use human  
21 factors in the work that they do?

22 A. Yes, nearly all the governmental agencies will employ human  
23 factors scientists to assess how the user affects safety with  
24 the product or products that they are in -- interest in.  
25 Notably the Consumer Product Safety Commission, the CPSC,



1 employs human factors staff and have them on projects to assess  
2 the safety of products, to perform investigations into hazards  
3 associated with products. And then also to look at root causes  
4 or mediation to potential hazards.

5 Q. So there are permanent full-time human factors scientists  
6 on staff at the CPSC and this other --

7 A. Yes, there --

8 Q. -- organizations that -- I'm sorry. And these other  
9 organizations you listed?

10 A. Yes. And there have been for -- for decades.

11 Q. Okay. So talk to us a little bit, if you would, about the  
12 role that human factors plays in the design of products.

13 A. Certainly. So as I said, this science is concerned with  
14 how the user interacts with product. And when thinking of the  
15 user, we have to understand that we are limited -- we have  
16 ability, but we also have limitations in a variety of ways. I  
17 mean, we are limited through our perceptual, how we take in  
18 information, whether that be auditory or visual information, or  
19 tactile information.

20 We're also limited in -- by our motor skills. How --  
21 how far we can reach. Our body size plays into how well we fit  
22 into environment. What we can reach, where we can reach to.  
23 As well as our physical strength will relate to what we can  
24 operate.

25 Now, often overlooked is also the -- in motor skills

1 is one's dexterity. We can -- we might be able to move our arm  
2 in a ballistic sort of a fashion. But control over fine motor  
3 skill is very different. And that is a different ability in  
4 which different portions of the population may be more or less  
5 limited.

6           And then finally we're also limited in our cognitive  
7 abilities. Our information processing system is -- is one that  
8 is also investigated by cognitive psychologists. And this  
9 relates to how we take in information, how we incorporate that  
10 into our memories or expectations or familiarity with -- with  
11 systems and environments and product, and how we use that  
12 information to change our behavior.

13 Q. And so how do you take those physical cognitive  
14 considerations and apply them to the design of a project in  
15 general?

16 A. Well, oftentimes studies like that in that application, I  
17 think it's the -- the marker of usability. And what we look at  
18 is a product and what that product affords the user, what they  
19 -- how they can use it, and whether or not the different sorts  
20 of modes of interaction, either display, its control  
21 mechanisms, even its placement -- how that relates to how the  
22 user can be expected to interact with that and how that might  
23 relate to safety.

24           We -- we are concerned with things like what  
25 population is going to be using this product? How familiar is

1 the person with the product? What is the environment for its  
2 use? What is the range of environments for its use?

3 And then finally, what expectations does the -- does a  
4 user bring to the product? What do they already know about it?  
5 What do they assume they know about it when they are attempting  
6 to interact with it?

7 Q. Okay. Have you -- in doing the study of your science up to  
8 the work in this case, have you reviewed and relied upon  
9 literature on the subject of human factors?

10 A. Yes, I have.

11 Q. Now, if counsel wanted to question you or cross-examination  
12 you or test some of the conclusions that you reached in this  
13 case, for example, are there publications that you rely upon  
14 that discuss the usability concept that you just described?

15 A. Yes, there are.

16 Q. And you relied upon those in reaching your conclusions in  
17 this case, among other things?

18 A. Absolutely.

19 Q. Okay. Now, what types of matters have you been consulted  
20 in? The two thirds of your practice that is involved in  
21 forensic litigation related consulting, can you give us an  
22 overview of the types of products that you've been involved  
23 with?

24 A. I have been involved with a variety of products, many  
25 consumers products, different types of appliances, different

1 types of home products, window blinds and window coverings as  
2 well. And then also, as I have stated, a number of child  
3 products, strollers, bouncy seats, different sorts of  
4 environments where you expect to find a child.

5 Q. Have you been involved in cases where you were asked to  
6 consider the usability of certain types of products and their  
7 designs?

8 A. Yes.

9 Q. Have you also been involved in cases and qualified as an  
10 expert witness to testify in cases where warnings or safety  
11 information were one of the issues?

12 A. Yes.

13 Q. Okay. And you understand both of those are in some fashion  
14 at issue in this case, correct?

15 A. Yes.

16 Q. Okay. Now, you have been asked to look at a couple of  
17 different issues in this case. And once again, for purposes of  
18 keeping us on track and framing the issues that you're going to  
19 continue to talk about today --

20 MR. WILLIAMS: What I'd like now to do, your Honor,  
21 is -- I hate to do it, but I am going to ask if I toggle back  
22 to the camera for a second, and then go back to the slide show.  
23 And I have marked as Exhibit 2 a copy of Dr. Sala's report.  
24 And I will offer it to your Honor.

25 And do you have a -- if I may approach, your Honor?

1 THE COURT: You may.

2 BY MR. WILLIAMS:

3 Q. Dr. Sala, is Exhibit 2 a copy of your report in this case?

4 A. Yes, it appears to be.

5 Q. What's the date of this report?

6 A. June 30, 2011.

7 Q. Okay. We are going to skip back to the end of your report,  
8 the next to last page, page 14. And I'm going to display it on  
9 the screen.

10 Do we see on page 14 a summary of the opinions that  
11 you reached after your review of this case?

12 A. Yes.

13 Q. Okay. Now, what I'd like to do before we talk about each  
14 of those opinions is briefly summarize them. The first one  
15 addresses the response of Hunter Douglas to the general issue  
16 of the child strangulation hazard on window blind cords in the  
17 time period before the manufacture of these blinds. So not  
18 focusing on these blinds, but in general in 1980s and 1990s,  
19 you looked at how Hunter Douglas responded to this hazard, the  
20 identification of this hazard, and did an evaluation of whether  
21 you thought its response was reasonable and appropriate,  
22 correct?

23 A. Yes.

24 Q. And basically you understand, because I told you, that I  
25 asked you to do that because an expert for the plaintiffs, Mr.

1 Statler, has given some opinions in the same area.

2 A. Yes, I believe that was the impetus for the -- for that  
3 investigation.

4 Q. Okay. Then the second bullet point, which to me is  
5 probably the most important, I asked you to do an evaluation of  
6 the product in this case, and the question in particular of  
7 whether with respect to the vertical blinds at issue in this  
8 case, Hunter Douglas' decision to offer options with respect to  
9 how to operate those blinds -- and to be specific, both the  
10 cord and chain option on the one hand and a safety wand,  
11 PermAssure wand if you want to call it that on the other  
12 hand -- from 1995 forward, but in particular 1995, and whether  
13 that decision was a reasonable and safe way, correct?

14 A. Correct.

15 Q. And your opinion with respect to that issue is contained in  
16 the second bullet point?

17 A. Yes.

18 Q. Finally, the third and fourth bullet points both deal with  
19 the issue of warnings and safety information, correct?

20 A. Correct.

21 Q. With respect to the third bullet point, did I ask you to  
22 evaluate the plaintiff's claim in this case that if some  
23 different information had been provided by someone to the  
24 original purchasers of these blinds, a woman named Brenda  
25 Davis, that she would have behaved differently, done something

1 differently, purchased a different product. Have I asked you  
2 to evaluate that based upon all of the facts in this case and  
3 your training?

4 A. Yes, from the human factors science standpoint.

5 Q. And that involved the issues you talked about about  
6 behavioral sciences and how people respond to warnings and  
7 information and various stimuli, correct?

8 A. Correct.

9 Q. And then finally on the fourth bullet point, did I ask you  
10 to do an analysis of the plaintiffs' claim in this case that  
11 had there been some warnings, additional information, provided  
12 to Mr. and Mrs. Padilla, who were not the original purchasers  
13 of these blinds, that they would have behaved differently or  
14 done something differently that might have reduced the risk for  
15 this accident.

16 Have I asked you to look at that claim as well?

17 A. Yes.

18 Q. So that's the fourth bullet point, correct?

19 A. Correct.

20 Q. Does that fairly frame the issues that you -- upon my  
21 request in this case?

22 A. Yes.

23 MR. WILLIAMS: Your Honor, if I could ask to toggle  
24 back to the PowerPoint presentation.

25 BY MR. WILLIAMS:

1 Q. Okay. With respect to the first bullet point conclusion  
2 that we just looked at, Dr. Sala, the what I call historical  
3 response, tell us what you set forth on the next slide.

4 A. Well, in order to evaluate this from a human factors  
5 standpoint and from a scientific standpoint, I was interested  
6 in gathering and putting forward a historical perspective and a  
7 data-driving identification of the injury pattern and the  
8 response through the years in question. And in order to -- to  
9 assess, as Mr. Statler contended, that -- that even a -- a  
10 glancing at this data would have -- would have illustrated the  
11 hazards that were present.

12 And to do so, I reviewed the original documentation  
13 and reports from the CPSC related to strangulation and  
14 identified that in 1981 the CPSC identified that window cords  
15 were associated with strangulation events. But the CPSC staff  
16 at that point had also stated that this -- this potential  
17 hazard was not amenable to design changes, and recommended that  
18 the course of action that should be undertaken is to educate  
19 the public and increase the consumer awareness.

20 Q. When you say the CPSC said it wasn't amenable to a design  
21 solution, what's the basis for that statement?

22 A. Well, in 1981, there was a research investigation put  
23 forward by the CPSC. They had received information of child  
24 strangulations for eight years and had -- had referred to these  
25 and gone into depth as to what was involved with the -- those



1 strangulations. In culmination, they put together a report.  
2 And in that report they specifically state that it was not  
3 amenable to that.

4 I -- if you like, I can refer to the report to get the  
5 exact language.

6 Q. Can you pull it out and give us a citation and author and a  
7 date please?

8 A. The report -- the report is a memorandum with the subject  
9 of Infant Strangulations. It is written by Terri, that's  
10 T-e-r-r-i, Rogers, who is the project manager for Children's  
11 and Recreational Products Program, Office of Program  
12 Management, with the CPSC. And specifically on page 2, he  
13 writes -- or she writes, I apologize: Some products that were  
14 frequently involved in strangulation accidents do not appear  
15 amenable to product design changes or elimination as a  
16 potential strangulation risk. Many are not children products  
17 and serve other useful purposes in households. Examples of  
18 these products include drapery and blind cords, ropes, strings  
19 and cords not otherwise specified, electrical cords and  
20 bedding.

21 Q. Okay. So that's 1981. And the CPSC at least at that time  
22 was focusing on education to increase consumer awareness, as  
23 you succinctly state in your slide?

24 A. Yes.

25 Q. So let's move forward to mid-1980 time period. We know

1 there was a significant press release from the CPSC and the  
2 industry together sometime in 1985, correct?

3 A. Correct.

4 Q. What -- what went on then? What was happening and what was  
5 evolving?

6 A. Well, as the CPSC continued monitoring strangulation  
7 events, they began to investigate more. And they teamed and  
8 partnered with industry at this point. They approached the  
9 industry, and they shared with the industry some of their data.

10 Now, what I think is important to understand what the  
11 CPSC is that as a watchdog of consumer product safety. They  
12 have access to databases and they maintain databases of child  
13 or actually anyone's injury but particularly child injuries  
14 with respect to consumer products.

15 Q. And what's that database referred to? Or you said there  
16 are databases, multiple. What are they, and what are they  
17 called?

18 A. There are a few. The one significant one is the National  
19 Electronic Injury Surveillance System, otherwise known as the  
20 NEISS database. Now this is a statistical sampling of hospital  
21 emergency rooms. I believe it's approximately a hundred or a  
22 hundred and one hospital emergency rooms from across the  
23 country. They're divided and categorized into strata as to how  
24 large a population and what sort of population they serve.

25 Q. So is there demographic diversity?

1 A. Correct.

2 And from this sampling, they take in and they -- they  
3 process every injury that is seen in the emergency room and  
4 gather information related to the age of the person involved,  
5 what type of injury, what the diagnosis was, the status of the  
6 injury, or whether or not the person was treated and released.

7 They also take in information as to what products, up  
8 to two products, that are associated with that injury. And  
9 then also a brief narrative to help fill in the blanks as to  
10 what might have happened at the time of the injury.

11 Q. Now, with respect to certain accidents that make their way  
12 into the NEISS database, does the CPSC in some cases go further  
13 and do investigations into those accidents?

14 A. Yes. One of the -- one of the goals of the NEISS database  
15 is to provide nationally representative estimates of injury.  
16 However, additionally, when the CPSC is investigating, or  
17 particularly interested in a type of accident, like window  
18 coverings and strangulations, they will also choose to  
19 investigate further certain incidents that have come to their  
20 attention through the NEISS database.

21 And when they do that, they call those in-depth  
22 investigations, or IDIs. This is where they send an  
23 investigator out into the field. They often will interview or  
24 visit the accident site. They will talk with either the first  
25 responders, the people involved, the coroner if it's a

1 fatality. And they will issue a report laying out as many  
2 details at possible, and at times offering opinions as to what  
3 various causes or contributing factors there were.

4 Q. Okay. So by the mid-1980s, when this press release came  
5 out, educating the public or adding to the notification and  
6 awareness of window blind cord hazards, what was the focus of  
7 industry and CPSC on what the issues were and how to attack  
8 them?

9 A. Well, at this time, the CPSC and the industry in review of  
10 this data were developing an understanding of how these  
11 incidents happened and what the most likely accident scenario  
12 were. And what often was found was that these incidents were  
13 occurring in bedrooms. They were occurring when a child was in  
14 a crib and they gained access to what was typically horizontal  
15 or mini blinds and the pull cords of mini blinds. These were  
16 either instances where a child would put their head through a  
17 formed loop or wrapped the cord around their neck somehow, and  
18 then either fall or move into a position where they couldn't  
19 get the -- themselves out of.

20 In immediately addressing this, they again focused on  
21 recommendations to parents to try and keep children away from  
22 the cords. The idea was to keep cribs and child furniture away  
23 from windows and window coverings, to investigate cord  
24 management techniques, wrapping cord up. Even something like  
25 putting a safety pin or safety -- clothes pin around the cord

1 was suggested, so as to keep the cord itself out of the reach  
2 of the child if they couldn't otherwise position the child away  
3 from the cord.

4 Q. Okay. Then moving into the 1990s, did Hunter Douglas and  
5 others begin to appreciate that something more than the  
6 education needed to be done in order to address the  
7 strangulation hazard posed by certain types of window blinds?

8 A. Yes.

9 Q. What went on in the early 1990?

10 A. In the early 1990s, there was significant efforts from both  
11 the CPSC and the industry working in partnership to develop an  
12 engineering fix to -- or engineering solution to this overall  
13 accident pattern. And they investigated ways to do so, coming  
14 up with a retrofit campaign in order to address the most  
15 significant of the concerns, which was the horizontal blinds in  
16 children's bedrooms.

17 The suggestion was to use what's known as a break-away  
18 tassel at the -- where cords that were -- controlled the  
19 horizontal blinds came together, so that if a child were to put  
20 their neck into this -- this area and then rest their weight on  
21 it, the weight that was concentrated where that -- that  
22 break-away tassel was would give way and the child would be  
23 released.

24 Q. Now, you mentioned horizontal blinds were the focus. Why  
25 was that? We heard a lot yesterday and throughout this case of

1 what's the difference between a cord on a horizontal blind and  
2 a cord on vertical blind. As you reviewed the history and the  
3 information from Hunter Douglas as well as the CPSC, in your  
4 words, what if anything differences are there between  
5 horizontal and vertical blinds, and why were horizontals the  
6 focus of the effort in 1990s?

7 A. I think that there are probably a number of reasons why the  
8 horizontal blinds were the focus and -- and honestly rightfully  
9 so given the data that was available at the time. When one  
10 looks at the -- the underlying data, I've gone back. I  
11 reviewed the IDIs that were available in this time frame. And  
12 I reviewed the -- the sorts of analyses that were being  
13 performed and put forward by these organizations.

14 The pattern that really does evolve is that these  
15 horizontal blinds, they were the ones involved in the vast  
16 majority. I believe the -- in approximately 86 percent of all  
17 of the -- the strangulation events it was a -- it was a  
18 horizontal blind.

19 There are a number of reasons why this might be. I do  
20 believe that -- that horizontal blinds are the most represented  
21 in the marketplace. But then also they are -- they were the  
22 ones that were most frequently placed in bedrooms near these  
23 cribs where children were gaining access to them.

24 Now, finally also I believe that part of the issue as  
25 to the focus was that there was a design -- a design fix in

1 sight for this type of a product. The break-away tassel was  
2 well suited for the horizontal blind and would address the vast  
3 majority of the strangulation events.

4 Q. Did it affect the utility of horizontal blinds in any way?

5 A. No.

6 Q. So when the safety tassel was developed -- by the way, do  
7 you know what company developed that?

8 A. I believe that Hunter Douglas was involved in the  
9 development of that tassel.

10 Q. When that tassel was developed, was it one that could be  
11 applied to all horizontal blinds without affecting their  
12 utility?

13 A. Yes, all horizontal blinds, yes.

14 Q. Okay. So there was a retrofit campaign in the 1994-1995  
15 time frame involving horizontal blinds in which the break-away  
16 tassel was made available for free to any consumer, and all new  
17 products began to be manufactured with it, correct?

18 A. Correct.

19 Q. Education campaign continued, correct?

20 A. Correct.

21 Q. And then not long after 1994 comes 1995. Of course that,  
22 we know, is when the blind at issue in this case, the vertical  
23 blind, was manufactured.

24 What was Hunter Douglas doing in particular with  
25 respect to looking at the hazard -- because even though it

1 involved fewer products, many fewer products, you know, there  
2 were cases that had been reported involving strangulations on  
3 vertical blind cords, correct?

4 A. Correct.

5 Q. What did Hunter Douglas do?

6 A. Well, my understanding is that by April of 1995, Hunter  
7 Douglas had developed a solution to the -- to this potential  
8 hazard as well. They developed the PermAssure wand, which  
9 eliminated the looped cords or the continuous loop cord in the  
10 vertical blinds.

11 Q. Okay. So we are going to move now away from the historical  
12 review. Does that essentially summarize what you looked at and  
13 the bases for your opinions that Hunter Douglas was acting  
14 reasonably in responding to the strangulation hazard generally  
15 in the '80s and '90s?

16 A. Yes.

17 Q. Now I asked you to turn to your second opinion, and that is  
18 the one that it was reasonable, prudent and safe for Hunter  
19 Douglas to offer consumers the choice in 1995 when the  
20 PermAssure wand came out of either the wand or the cord and  
21 chain, right?

22 A. Yes.

23 Q. Tell us what you did in performing that analysis and what  
24 you relied upon.

25 A. Certainly. Now I think that again, it's -- it's worth



1 looking at the differences that we have for something like the  
2 horizontal blind and the vertical blind. And that's really  
3 what the human factors considerations comes down to here. The  
4 vertical blinds are a different product. And they have  
5 different needs and they have a different environment. And we  
6 have to consider these things when we are -- when we are  
7 determining whether or not an engineering solution is  
8 appropriate for the product.

9           With the horizontal blind, the control mechanism -- a  
10 user will approach the blind. They will reach out and grab the  
11 cords or cord, depending on how many cords are coming down.  
12 They will be joined by this break-away tassel. And user will  
13 operate them by pulling down continuously on it.

14           And then to release or to lower the blinds, they would  
15 pull on it again and raise the cords.

16 Q. So all the cords are moving together in the same direction  
17 all the time?

18 A. Yes. And consistently the force is being applied in a  
19 single direction on these cords.

20 Q. What's the difference with the vertical products?

21 A. Now with the vertical product, we have a continuous loop  
22 that feeds through the entire mechanism. And so as one reaches  
23 to maybe move the slides -- or move the veins from the left to  
24 the right, one will grab the cord and pull it down, feeding the  
25 cord -- the rest of the cord back into the control mechanism.

1 Now, to then operate in the other direction, one grabs the  
2 other side of this and pulls on the same cord.

3 A break-away tassel or positioning the -- a break-away  
4 tassel would limit the -- or actually remove the utility of  
5 this product because as one pulls on one side of it, they would  
6 be pulling and activating the break-away tassel. And the  
7 product would no longer be usable.

8 Q. You would have much more than three or four pounds of  
9 pressure below the tassel at some point, and that will cause it  
10 to break apart?

11 A. Correct.

12 Q. So that explains why the break-away tassel wasn't a fix for  
13 the loop on vertical products. You understand that Hunter  
14 Douglas developed and introduced the PermAssure wand in the  
15 spring of 1995, correct?

16 A. Yes.

17 Q. But they continued to offer for sale vertical blinds if  
18 consumers chose with the cord and chain, correct?

19 A. Yes. And once again, that relates to the utility and the  
20 functioning of the product.

21 Q. Okay. Why? Why -- because that's if not the big issue --  
22 I think it is the big issue -- is a key issue in this case.  
23 Why was it reasonable? Why was it prudent? Why was it  
24 consistent with safe practices to continue to make that option  
25 available to certain consumers?

1 A. Certainly. So the wand places demands on that control  
2 mechanism that otherwise wouldn't be there for users. So  
3 again, when we are trying to decide -- to look at the human  
4 factors consideration in design of a product, we are looking at  
5 who the users might be. We're looking at what size they are,  
6 how far they might be able to reach, where they might be able  
7 to reach to, how strong or what sort of mobility issues they  
8 might have, how dexterous they might be, how good they are in  
9 fine motor control, and whether or not they would likely have  
10 any disabilities or diseases that would limit these.

11 Additionally, we're interested in what is the range of  
12 these uses. And for many of these things, how is these -- how  
13 do these aspects change with the development or with age of a  
14 person.

15 The other side of this that we would consider, aside  
16 from just who's expected to use the product, is the environment  
17 that it's going to be used in. Now, vertical blinds are going  
18 to most often be placed in living rooms or over sliding glass  
19 doors, where there is a large bank of windows. What that is  
20 often associated with is furniture, constraints on the  
21 environment, that might limit the available space for either  
22 someone to reach or someone to move around in order to -- to  
23 reach to the control mechanisms.

24 Q. Have you elected a couple of photographs from catalogs and  
25 the internet that simply provide examples of what you're

1 talking about when you talk about the environment of vertical  
2 blinds?

3 A. Yes, yes. These are examples of -- or photographs of where  
4 one might find vertical blinds and the types of vertical  
5 blinds, a range of vertical blinds that might be in a home  
6 environment. And what is -- what I'd like to highlight with  
7 these is that the environment here is going to be very varied  
8 and place demands on a user.

9 If a user were to approach a vertical blind and have  
10 the control mechanism be the wand, the PermAssure wand, they  
11 would have to reach for and access that wand and then move with  
12 that wand the entire length or run of how they wish to open the  
13 blind.

14 So for instance, in one of these images, if this was a  
15 blind that had a control mechanism at its left edge, and I  
16 am -- in particular I am considering the lower right image  
17 here. If one were to approach that wand, they would need to  
18 grab it and then walk the entire length and possibly behind  
19 that couch in order to open that blind fully.

20 Now the other aspect of the PermAssure wand was that  
21 the tilt mechanism or the tilting of the veins was accomplished  
22 through a twisting motion with the wand. And that is a fine  
23 motor skill. That is something that you require not a simple  
24 ballistic motion as you would with possibly opening them, but  
25 something that requires fine motor control. And each of these

1 constraints places a demand on the potential user.

2 Q. Okay. Now, you talked about the environment just now.

3 Before that you were talking about the -- the limitation on the  
4 individuals. Are there published peer review studies that you  
5 rely upon in forming your opinions that there are significant  
6 segments of the population that would not be able to utilize,  
7 even on a small window that wasn't very high, the wand to  
8 operate it?

9 A. Yes.

10 Q. And have you produced in conjunction with your file in this  
11 case to plaintiff's counsel copies of those studies to be able  
12 to be cross-examined on?

13 A. Yes.

14 Q. Are those the types of studies that human factors  
15 scientists such as you routinely rely upon in doing evaluations  
16 such as the one you done in this case?

17 A. Yes, they are.

18 Q. Now, Dr. Sala, with respect to your opinion that it was  
19 reasonable, prudent and safe for Hunter Douglas to continue to  
20 offer consumers this choice in 1995, is that a unique situation  
21 in which a manufacturer properly offers consumers the choices  
22 of various products, one distinction among them possibly being  
23 relative levels of safety?

24 A. No, I don't believe its -- it's unique.

25 Q. Have you seen that before?

1 A. Yes, indeed.

2 Q. Can you give us a couple examples?

3 A. One example would be related to -- to car seats, child car  
4 seats. There is a range of options. There are a number of  
5 different styles and types of car seats. There is rear facing  
6 car seats, forward facing car seats, booster seats. And the  
7 idea is that as your needs and as the child's needs change, you  
8 take into consideration which ones might be appropriate for  
9 your usage.

10 Now, the sciences is fairly clear on this that the  
11 rear facing child seat provides the greatest crash protection.  
12 This is something that -- that could be found throughout a  
13 number of years of research. However, the -- we still offer  
14 other types of car seats all the way up to booster seats which  
15 are basically just repositioning the child into the vehicle's  
16 own restraint system.

17 We currently have -- and there are products on the  
18 market that allow for children of significant size and age to  
19 be seated in some of these -- these five-point harness  
20 restraints. Yet people will produce and will make choices to  
21 use other restraint systems. And that is something that --  
22 that is considered a reasonable line of products.

23 Q. Considered reasonable by you and others who are involved in  
24 everything from that industry to the Consumer Product Safety  
25 Commission?

1 A. Yes, and also the federal government.

2 Q. Okay. Now, so for example, if -- if a manufacturer of car  
3 seats were required under the law, as has been suggested, to  
4 make available for consumers and only make available the safest  
5 possible car seat that could be manufactured for a child of a  
6 certain size, if that were the case and they would not be able  
7 to offer booster seats or forward facing seats with less than  
8 five point harnesses, things like that, correct?

9 A. Yes.

10 Q. In your opinion, those situations, though, involved  
11 reasonable balancing of risks, and the decision to offer  
12 consumers choice there is a reasonable one, correct?

13 A. Correct.

14 Q. And have you concluded in this case that the choice being  
15 offered by Hunter Douglas of the various operating mechanisms  
16 on this set of blinds produced in 1995 was prudent, safe and  
17 reasonable as well?

18 A. Yes.

19 Q. Okay. I'm going to ask you to pivot one more time. I am  
20 going to tell you that by my watch we have about eight minutes  
21 left together. And we need to stay on track.

22 So can we turn now to the science of warnings and the  
23 analysis that you've done here.

24 A. Yes.

25 Q. What's involved -- when you say, science of warnings.

1 That's the heading on your first slide. What do you mean by  
2 that?

3 A. Well, human factors addresses warnings information from a  
4 scientific perspective. There has been 40-plus years, four  
5 decades, of empirical research on people's response to warnings  
6 and on warnings in general.

7           One of the key areas that we investigate is the likely  
8 effectiveness or the -- what is the behavioral response to  
9 warnings. And our scientific investigations largely allow us  
10 to built frameworks of the conditions and the situations in  
11 which one would expect -- or one would expect behavioral change  
12 or what would be more or less likely to affect behavior change  
13 with response to warnings. And we use this information to  
14 extrapolate or predict human behavior.

15 Q. And in the litigation context, do you look at that because  
16 you often are presented with a claim that if some different or  
17 additional warning had been presented, then an accident would  
18 have been prevented?

19 A. Yes, that's -- that's typically the impetus, and that's the  
20 hypothesis, that additional information would have led to  
21 different behaviors.

22 Q. And as part of that analysis, in your opinion, is it  
23 necessary to look not only at whether in theory there could  
24 have been a better warning, but even if there had been what the  
25 likelihood is that that would have affected the behavior of the



1 people involved?

2 A. That's where we turn to the science, yes.

3 Q. So let's continue on with your next slide.

4 A. What we have learned over the years is that warnings  
5 have -- they can do certain thing. If you provide safety  
6 information, and your expectation is that it's going to change  
7 behavior, the role of the warning, what warnings really do is,  
8 they can present this information. You can present it in a  
9 clear fashion. You can present it where -- where a user might  
10 need to access it. And you can try to be as concise and  
11 understandable with this information as possible.

12 But what a warning can't do and what a warning does  
13 not do is, it does not compel behavior. You can't design  
14 effectiveness into a warning. The effectiveness of a warning  
15 is dependent upon the person's or the receiver's response to  
16 that warning, what they choose to do with that information and  
17 how they would either change or modify the behavior in response  
18 to it.

19 What we know from the science is that there are a  
20 number of factors that make this very difficult to achieve and  
21 often will not. And specific factors that include previous  
22 benign experience with the product, familiarity with the  
23 product, the amount of effort that would be involved in taking  
24 that behavior, and also one's own perception of control over  
25 the hazard.

1 Q. Have I asked you to give a couple of examples of peer  
2 reviewed published studies that demonstrate the points that you  
3 are talking about?

4 A. Yes.

5 Q. Okay. Can you turn to those?

6 A. Certainly. This -- this first example is from a study  
7 where subjects were asked to interact with a hammer. And they  
8 had a fairly simple task. They needed to start a pilot hole in  
9 a piece of wood with a hammer and nail.

10 Now, the original study had presented a warning on  
11 this hammer, and there were various warnings that were  
12 presented. One of them says, caution, do not proceed further.  
13 Ask for instructions before you continue this operation. It is  
14 important that you do not use this hammer to strike.

15 Now, in the actual experiment, no subject saw this  
16 warning. No subject noticed it or complied with this warning.

17 Q. It was located on the handle of --

18 A. Yes, it was right on the handle of the hammer.

19 Interestingly when people were asked, when they were  
20 presented with this idea that you were going to be presented  
21 with this hammer with this warning on it, and it was asked,  
22 would you comply with this warning, approximately half the  
23 people said, yes, I would comply with that warning.

24 When asked if others would comply with this warning,  
25 they -- slightly fewer percentage of people said that on -- in

1 total about half the people would comply with this warning.  
2 Yet when you compare that to the actual compliance rate, zero  
3 percent of people complied with this warning.

4 Q. Okay. Is -- have studies like this been done across  
5 product types?

6 A. Yes, indeed.

7 Q. And what types of products?

8 A. Well, the big finding is that these sorts of results with  
9 respect to warnings are not dependent on the product type.  
10 They cut across numerous products, consumer products, work  
11 environment, work products. Everything from jigsaws and  
12 intersection stop signs to car seats and child restraints.  
13 This has been shown many times over and over that people  
14 oftentimes will not notice the warning. When they do notice  
15 it, they largely do not comply with it.

16 Yet asked in the abstract of whether or not they would  
17 or others would, they often endorse that, yes, they would  
18 comply with that warning.

19 Q. Okay. And our examples, in particular some of the studies  
20 that you have referred to today and others that you rely upon  
21 been provided by you as part of your file in this case to  
22 plaintiff's counsel?

23 A. Yes.

24 Q. Okay. So to summarize with respect to the issue of  
25 warnings, what does the research tell you that is relevant to

1 your analysis in this case?

2 A. Well, for -- as a summary and relevant to this case is that  
3 oftentimes users do not even notice on-product warnings, even  
4 when those products -- or those warnings are conspicuous, when  
5 they involve formatting elements that people would think would  
6 make them more conspicuous. Color, bold lettering, larger  
7 lettering.

8 When warnings are actually noticed, the compliance  
9 rates are typically low. People tend not to follow the  
10 warnings, especially on products that are familiar to them,  
11 that they've had benign experiences with in the past, and that  
12 they feel that they would have control over otherwise.

13 And then finally, importantly, people don't understand  
14 their own behaviors with respect to -- they don't have an  
15 insight as to what their behavior or other behaviors would be  
16 in response to safety information. Largely they overestimate  
17 what their own compliance and what other's compliance would be  
18 with posted warning information.

19 Q. And is that relevant to your analysis of whether some  
20 different or additional warning, despite what people say they  
21 would have done if they had received it -- what in fact if any  
22 different behavior that would have prompted?

23 A. Yes.

24 MR. WILLIAMS: Okay. Your Honor, if I could indulge  
25 you one more time to go back to the camera on the display, I'll

1 wrap up.

2 BY MR. WILLIAMS:

3 Q. As we discussed at the outset, Dr. Sala, your last two  
4 points relate to the general subject of warnings. In the  
5 interest of time, I am not going to touch on the one relating  
6 to Ms. Davis because I don't think it's as important.

7 With respect to Mr. and Mrs. Padilla, though, you have  
8 expressed the opinion they did not demonstrate safety  
9 information seeking behavior. And that your conclusion is that  
10 there is no scientific reason to believe that either additional  
11 or alternative warnings or safety information provided with the  
12 product would have altered their behavior.

13 Are you saying that they are bad parents?

14 A. No.

15 Q. Are you criticizing them in terms of the household that  
16 they ran or the love and care and attention they gave their son  
17 Max?

18 A. No, not at all.

19 Q. Is this conclusion that you reached based solely on nothing  
20 specific or personal to the Padillas other than factual  
21 information about other things that were around the house, for  
22 example the television that Mr. Padilla said he was concerned  
23 about falling on Max but didn't do anything about?

24 Is that the basis of your opinions with respect to  
25 bullet point No. 4?

1 A. Yes, I pulled from their testimony in the evidence facts  
2 that -- that align them with the typical response to these  
3 warnings, and certainly did not put them outside of what you  
4 would expect from the scientific literature.

5 Q. So they are not unusual. They don't have to be unusual in  
6 order to be in a class of people that additional warnings in  
7 all likelihood wouldn't have made any difference to?

8 A. Correct.

9 Q. Dr. Sala, to wrap up, with respect to each of your four  
10 opinions in this case, did you have sufficient data to form  
11 each opinion, in your view?

12 A. Yes.

13 Q. Did you, in forming each of these opinions, use reliable  
14 principles and methods of the science of human factors?

15 A. Yes.

16 Q. And have you applied those principles and methods to the  
17 facts of this case in particular in reaching each of these  
18 conclusions?

19 A. Yes.

20 Q. So fair to say, you applied the scientific method of human  
21 factors to your analysis in this case in reaching each one of  
22 these four opinions? And I'm lumping them together only in the  
23 interest of time.

24 A. Yes.

25 MR. WILLIAMS: Thank you very much.

1           Thank you, your Honor. Those are all the questions I  
2 have.

3           THE COURT: Thank you.

4           As a matter of timing, I just want to let counsel know  
5 that today I do have a previous engagement at noon. And so we  
6 are going to take a break during your examination at noon until  
7 1:00. And then we'll come back and you can continue your  
8 examination at that time.

9           MR. JAUREGUI: That's fine.

10          MR. WILLIAMS: Thank you, your Honor.

11          Dr. Sala, are you good on water?

12          THE WITNESS: I am. Thank you.

13                           CROSS-EXAMINATION

14 BY MR. JAUREGUI:

15 Q. Good morning, Dr. Sala. How are you?

16 A. I am doing well. Thank you.

17 Q. Good to see you again.

18           You indicated earlier that you had a doctorate in  
19 cognitive neuroscience?

20 A. Yes.

21 Q. And on your -- and the report that you prepared for this  
22 case, you indicate you had a doctoral in experimental  
23 psychology. Is there a difference between the two?

24 A. The -- I believe the actual doctorate degree just says  
25 doctor of philosophy. The nomenclature of the topic area is

1 really related to what the program offered. And it was the  
2 psychological and brain sciences. I studied cognitive  
3 neuroscience, experimental psychology, cognitive psychology.

4           There is many sorts of disciplines covered by that  
5 department.

6 Q. My question is very simple. So is your degree -- is your  
7 doctorate in experimental psychology?

8 A. That's what I studied.

9 Q. That's what your diploma says?

10 A. Again, as I stated, the diploma just says, doctor of  
11 philosophy, and the department that I got it from.

12 Q. What department was that?

13 A. Psychological and brain sciences.

14 Q. And experimental psychology, is that an area of study that  
15 is pretty much -- is the field of experimental psychology -- is  
16 that a field that is pretty well settled and established?

17 A. I think that is -- like many scientific disciplines, it's  
18 evolving.

19 Q. It's evolving area.

20 A. Yes.

21 Q. Now, Doctor, you're not a -- you are not an engineer, is  
22 that correct?

23 A. Correct, I'm not an engineer.

24 Q. And for purposes of this case, you did not do any  
25 independent studies, is that fair? Is that a fair statement?



1 A. Independent studies, no, I don't believe I did any  
2 independent studies.

3 Q. So you relied on information, other studies that other  
4 people have done. But specifically you did not do any studies  
5 such as any ergonomic studies?

6 A. I did not perform any sort of experimental studies where I  
7 would bring people into a laboratory, no.

8 Q. All right. Now, the company that you work for, how long  
9 have you worked for them?

10 A. Approximately eight years.

11 Q. How many employees are at Exponent, approximately?

12 A. I believe we have somewhere on the order of three or 400  
13 full-time consultants.

14 Q. Is that a national company or is it worldwide?

15 A. We are international.

16 Q. International. Okay.

17 And is Exponent primarily a company that does  
18 consulting for corporations?

19 A. We are a scientific and engineering consulting firm. We'll  
20 work on behalf of clients that retain our services. Oftentimes  
21 it's companies. Sometimes in this -- in situations like this  
22 it's law firms that are representing parties in a lawsuit.

23 Q. Okay. In this case you are working for a corporation,  
24 right, Hunter Douglas?

25 A. Well, I have been retained on behalf of counsel, or by

1 counsel on behalf of Hunter Douglas, yes.

2 Q. Now, Doctor, you have not published any articles or studies  
3 relating to the issue of strangulation from window blind cords,  
4 is that correct?

5 A. I don't believe I have.

6 Q. And you have never designed any window coverings, is that  
7 correct?

8 A. I have never designed actual window coverings, no.

9 Q. And you did not have any experience in manufacturing window  
10 coverings, correct?

11 A. I do not.

12 Q. And you have no experience in the marketing or distribution  
13 of window coverings, correct?

14 A. I have no experience in marketing in general.

15 Q. You do not have any information one way or the other  
16 whether Hunter Douglas did any testing on the safety as it  
17 relates to the strangulation of young children from the cords  
18 of the vertical blind at issue in this case?

19 A. I'm sorry. Can you repeat the question?

20 Q. Yes. You have no information as to whether Hunter Douglas  
21 conducted any testing relating the strangulation to young  
22 children from the cords of vertical blinds?

23 A. I -- I'm limited to what has been discussed in this case as  
24 far as the -- what Hunter Douglas' activity have been. And I'm  
25 not aware of any sort of testing, as I think you're referring

1 to.

2 Q. Did you ever ask for whether or not such information  
3 exists?

4 A. No, I -- my historical analysis was limited to the  
5 information that was available and the role that Hunter Douglas  
6 took in those efforts. But otherwise I didn't ask any sort of  
7 more internal or private sort of work.

8 Q. Would that have been relevant to your inquiry here, whether  
9 or not there had been any testing done relating to the risk of  
10 the injury to young children from vertical cord blinds?

11 A. I don't know how that would have affected my analysis.

12 Q. Would not have been relevant?

13 A. I don't think that that would affect my analysis, no.

14 Q. Doctor, I want you to take a look at your resume -- not  
15 your resume. Your report for this case. We are going to do  
16 that again fairly quickly as to follow Mr. Williams' mode of  
17 operation here.

18 I need you to take a look at starting on page  
19 number -- page No. 4. There is some markings. You can  
20 disregard that.

21 Have you essentially -- one of the -- one of the first  
22 opinions in this case is the conduct or the response of Hunter  
23 Douglas was reasonable in light of what was known at the time.  
24 Is that fair?

25 A. I believe that's similar to what I was stating before, yes.

1 Q. And so you traced back the history to beginning in 1981,  
2 correct?

3 A. Yes.

4 Q. And you cited the information that you used for the -- in  
5 support of your historical research, correct?

6 A. Yes.

7 Q. And in fact, if you go from page No. 4 to page No. 5,  
8 essentially you continue to do the same historical background,  
9 what was going on in the industry, the how -- what information  
10 was known. You take a look at the data from the Consumer  
11 Product Safety Commission. You documented in there how the  
12 Consumer Product Safety Commission was reacting to that  
13 information, how that information was being shared with the  
14 window covering industry, correct?

15 A. I believe so, yes.

16 Q. All right. And on page No. 6, it's pretty much you  
17 continue with the same exercise, except now you're dealing with  
18 a different period of time. Now, you are dealing with a  
19 retrofit campaign from 1995 to 1996, is that fair? That's on  
20 top of the first paragraph?

21 A. Yes, this continues the sort of historical analysis that --

22 Q. All right. Then --

23 A. The historical analysis that was performed.

24 Q. And you continue to detail that pretty much  
25 chronologically, what was going on in the industry in the

1 middle of the page. You indicate a study from the -- a 1997  
2 study, Journal from the American Medical Association article,  
3 is that correct?

4 A. Yes.

5 Q. And it breaks down the percentages of how children were  
6 being strangulated from window covering cords, fair?

7 A. Yes.

8 Q. And you continue the same analysis on page 7, is that  
9 correct? Chronological historical background that you did.  
10 Now you are into August 2002, a recall of the blinds for  
11 horizontal blinds, correct?

12 A. I believe that is covered here.

13 Q. All right. And on page 8 of your report, again you  
14 continue to -- you concluded that is the end of your report,  
15 your review of the historical data on the first paragraph,  
16 correct?

17 A. I believe that finishes the section.

18 Q. And the first paragraph deals with a Window Covering  
19 Manufacturers Association or the Window Coverings Safety  
20 Council and what they were doing in terms of the work that they  
21 were doing in connection with the Consumer Product Safety  
22 Commission, correct?

23 MR. WILLIAMS: Objection, vague. I'm not sure. I'd  
24 like to follow where he is referring to, please.

25 MR. JAUREGUI: On top of the page.

1 MR. WILLIAMS: The four lines?

2 BY MR. JAUREGUI:

3 Q. This four lines top of the page, essentially you're  
4 documenting in there or you're chronicling the work the WCMA or  
5 WCSC -- they were interacting with the commission. And you --  
6 and you cited there a 1994 article, correct?

7 A. 1994 release, yeah.

8 Q. All right. So if you go back to page 4 of your report just  
9 for one quick minute there, I see that you start citing the  
10 information at footnote No. 25. The information that -- your  
11 historical chronicling of that information.

12 A. That -- that is the first footnote in --

13 Q. That's the first footnote.

14 And then if you go all the way to page No. 8, your  
15 last footnote associated with that summary is footnote No. 50,  
16 correct?

17 A. Yes.

18 Q. All right. So essentially you went back in history, and  
19 you look at the data. You look at the information. And you  
20 made a determination that what was known at the time by the  
21 industry and how Hunter Douglas reacted in response to the  
22 information that was known, that Hunter Douglas acted  
23 reasonable in their actions in responding to the danger posed  
24 by window covering cords.

25 Is that a fair statement?

1 A. The -- the historical data that -- the data that was  
2 available at the time, the -- these publications, the IDIs that  
3 I reviewed, yes, these served as a data source for me to  
4 consider in that evaluation.

5 Q. So -- and at the end of the day, you are telling the Court  
6 here that essentially Hunter Douglas did what everyone else in  
7 the industry was doing. They did whatever the commission asked  
8 them to do. And because they did what they were asked to do  
9 and because on the basis of the information that they knew at  
10 the time, that the conduct of Hunter Douglas was reasonable in  
11 light of that information?

12 MR. WILLIAMS: Even in this setting I will object to  
13 that. That misstates his testimony, your Honor.

14 THE COURT: You can go ahead and answer.

15 BY THE WITNESS:

16 A. I don't agree that that's what I would --

17 BY MR. JAUREGUI:

18 Q. Please go ahead. If you disagree with that, what part of  
19 the question do you not agree with?

20 A. I think that when you first phrased the question, you said  
21 what I would be stating is that since they were doing  
22 everything else. I -- not putting into that context, I look at  
23 the data available, the development of this knowledge over  
24 time, how it came about, what available information there was,  
25 and make determinations that based on that data, what were the

1 reasonable options and what were the -- what would be the  
2 likely focus.

3 Hindsight being 20/20, and you see all of this data at  
4 once and you know what was eventually done, that's not how the  
5 designed process actually works.

6 Q. I am not suggesting that. Okay? What I'm asking you is,  
7 as of 1995, let's take 1995. Hunter Douglas knew by 1995 that  
8 since 1981 window covering cords were acting -- or causing the  
9 strangulation of young children. Fair statement?

10 A. That children were strangling in window cords.

11 Q. Yes.

12 A. In 1995, yes. This was -- this was something that they  
13 were considering.

14 Q. Okay. So by 1995 they already had a history of knowledge  
15 of prior incidents of strangulation of young children by window  
16 covering cords, correct?

17 A. By 1995 they had -- yes, they -- they had understood the  
18 hazard. And they had worked before 1995 to come to that  
19 understanding and to design solutions to it.

20 Q. And one of those solutions that Hunter Douglas arrived at  
21 by early 1995 is to respond to the danger of strangulation they  
22 developed a vertical blind with a wand?

23 A. Yes, in 1995, I believe April. By April 1995 they  
24 developed the PermAssure wand.

25 Q. That's right. And it was April 1995.



1           And you understand that the blind at issue was  
2 manufactured or sold sometime in October of 1995?

3       A. Yes, that's my understanding.

4       Q. All right. And you are testifying here that  
5 notwithstanding the knowledge that Hunter Douglas had about the  
6 historical data in the more than a hundred 70 strangulations  
7 that had taken place up to then, that Hunter Douglas was  
8 reasonable in the conduct by continuing to manufacture and  
9 design and market to the public a vertical blind that contained  
10 loops, the very same danger that had been identified by the  
11 Consumer Product Safety Commission and that Hunter Douglas  
12 acknowledged that it existed.

13       A. I -- I -- I believe that we covered that, that I have  
14 reached opinions as to the reasonableness of the decision to  
15 offer the option of the continuous loop control as well as the  
16 PermAssure wand on vertical blinds at that time.

17       Q. And that was reasonable for Hunter Douglas to do?

18       A. Yes, I believe that's my opinion.

19       Q. So if the Consumer Product Safety Commission did not tell  
20 Hunter Douglas that they should do something about a problem  
21 that Hunter Douglas already knew was causing deaths of children  
22 by strangulation, as a human factors expert you are okay with  
23 that? You are not having any problems with that?

24       A. I -- I -- I don't agree with that statement. I'm having  
25 difficulty following your question.

1 Q. All right. One second.

2 Did the Consumer Product Safety Commission ever order  
3 Hunter Douglas to recall any of its products?

4 A. I don't know offhand if there is a specific recall.

5 Q. If the Consumer Product Safety Commission had told Hunter  
6 Douglas that it should recall its vertical blinds, then you  
7 wouldn't have any problem as to -- strike that.

8 Doctor, with the work that you have interacted with  
9 with the Consumer Product Safety Commission, I take it that you  
10 are familiar with the Consumer Product Safety Act?

11 A. The Consumer Product Safety Improvement Act?

12 Q. Yes.

13 A. Yes.

14 Q. And what does the act generally do?

15 A. The Consumer Product Safety Improvement Act generally  
16 strengthens the role that CPSC had and some of the means they  
17 had to either enforce or to investigate products.

18 Q. Now, is it your testimony before the Court here that  
19 because Hunter Douglas complied with the standards as were  
20 known at the time, or the mandates that were issued by the  
21 Consumer Product Safety Commission, as it relates to the design  
22 and manufacturing of window covering cords, that Hunter Douglas  
23 complied and did everything that it could do and acted  
24 reasonably?

25 A. Can I have the full question read back.

1 THE COURT: Go ahead.

2 (Record read as requested.)

3 BY THE WITNESS:

4 A. I -- I may not disagree with the front portion and the  
5 statements of that. But I don't believe that that is the  
6 ultimate deciding factor as to my opinion as to the  
7 reasonableness of the response. I have looked at the  
8 development of this knowledge separate from just simply what  
9 the Consumer Product Safety Commission was, in your words,  
10 telling the industry to do.

11 It's the independent analysis of this data and this  
12 history that has led me to my opinions.

13 BY MR. JAUREGUI:

14 Q. Let me show you the section from the Consumer Product  
15 Safety Act at Section 2515 USC 2074, Section A: Compliance  
16 with consumer product safety rules or other rules or orders  
17 under this act shall not relieve any person from liability at  
18 common law or under a state's statutory law to any other  
19 person.

20 Section B says: The failure of the commission to take  
21 any action or commence a proceeding with respect to the safety  
22 of a consumer product shall not be admissible in evidence in  
23 litigation at common law or under the state's statutory law  
24 relating to such consumer product.

25 Now, in light of that what I just read to you,

1 Doctor -- well, let me first ask you, do you disagree that that  
2 is the state of the law?

3 A. I am not a legal expert. I have no opinion on the state of  
4 the law.

5 Q. All right. And so I want to make sure I understand your  
6 testimony here. Again, are you saying that because Hunter  
7 Douglas complied with all the directives from the Consumer  
8 Product Safety Commission that they complied with the  
9 standards, as they were known at the time, that because they  
10 did all of those things, that they should not be held  
11 accountable because they acted reasonable?

12 A. That is not my testimony.

13 Q. So what is your testimony then? I am not getting it.

14 MR. WILLIAMS: That's argumentative. To summarize  
15 what he doesn't get is not a proper question.

16 THE COURT: You can answer the question to the extent  
17 you can relay what your opinion is.

18 BY THE WITNESS:

19 A. Following my human factors review and the -- of the  
20 historical data as to what was going on in the time frame at  
21 issue, the available information on child strangulations, the  
22 considerations being given by various entities at the time, I  
23 have come to the opinion that the time frame of the response  
24 and the response issued was reasonable.

25 BY MR. JAUREGUI:

1 Q. All right. Now, essentially you and Mr. Statler looked at  
2 the same information, correct?

3 A. I can't -- I can't tell the Court what Mr. Statler  
4 considered or how he considered and what depth he considered  
5 it.

6 Q. You reviewed his report, did you not?

7 A. I did. And I -- as I stated before, there is a statement  
8 in there that even a cursory or even a -- I believe it was --  
9 even the most casual review of the available in-depth  
10 investigations and literature on the subject he feels would  
11 have revealed the risk associated with -- or the risks  
12 associated with window words. And I decidedly disagree with  
13 that after my review.

14 Q. So you -- I mean essentially, you disagree. You come to --  
15 after you reviewed the historical data from the U.S. Consumer  
16 Product Safety Commission, and the actions of the industry was  
17 taken in response to that data, that information was available  
18 at the time, you have concluded that Hunter Douglas acted  
19 reasonably in providing the -- in responding to that  
20 information. And two, that Hunter Douglas acted reasonably in  
21 continuing to make available to the public window blinds one  
22 with the -- one with the cords and the other one with the  
23 blind?

24 A. And developing the PermAssure wand, yes.

25 Q. Now, did you look at the severity of the risk as part of

1 your analysis here?

2 A. Did I consider the severity of the risk?

3 Q. Yes.

4 A. Yes.

5 Q. And what did you find out about this severity of the risk?

6 A. Well, I -- I believe that the -- that the severity is  
7 strangulation, is a fatality.

8 Q. Okay. Did you consider the vulnerability of the  
9 population, that we are dealing with young children here?

10 A. Yes.

11 Q. And where does that appear in your report?

12 A. This is -- this is a general understanding of the hazard  
13 and what it is that we are speaking of when we talk about  
14 window cord strangulations.

15 Q. And so you told us you consider also availability, that  
16 there was a different design available, and Hunter Douglas  
17 acted reasonably in offering the wanded design because of the  
18 utility function?

19 A. Yes, I believe if I'm understanding your statement  
20 correctly, yes, I agree.

21 Q. Did you consider as part of your analysis in determining if  
22 Hunter Douglas' conduct was reasonable, that the issue that you  
23 were dealing with was latent? The danger was a latent danger  
24 from window covering cords?

25 A. I'm sorry. Can you --

1 Q. Yes. Did you take into account the nature of the danger of  
2 strangulation from window covering cords was a latent defect?

3 A. I am not sure what you mean by latent defect.

4 Q. Something that is not open and obvious, something that is  
5 not apparent.

6 A. I think that that might be an arguable point. I think that  
7 there is data that suggests portions of the population do not  
8 appreciate the potential hazard. I think there's been many  
9 efforts to increase that. And depending on the time frame  
10 you're talking about, there is information available about the  
11 general -- the knowledge of the hazard.

12 Q. All right. And do you know what the Consumer Product  
13 Safety Commission tells you about that issue, whether or not  
14 this is considered a hidden or latent danger?

15 A. Yeah. Yes, I believe that they used those terms in various  
16 time frames to talk about whether or not portions of the  
17 population are knowledgeable of this hazard.

18 Q. In fact, let me put this on the screen for you. These are  
19 reports I take it that you are familiar with and used from the  
20 CPS, or press releases that are issued from time to time by the  
21 commission. You've seen this before, correct?

22 A. I've seen this or a similar press release before.

23 Q. All right. I want you to concentrate on the highlighted  
24 portion there that I have in the middle of the page. And it  
25 reads: Each year 33 point million people are injured by

1 consumer products in the home. Some hazards are from products  
2 the agency has warned about for years. Others come from new  
3 products and technologies. To keep Americans informed of  
4 dangers, the CPSC has identified the top five hidden home  
5 hazards associated with products that people may be using every  
6 day, but are unaware of the dangers that they can cause. These  
7 home hazards are often unseen or unnoticed by consumers.

8           On the next page it writes, window covering cords as  
9 the top -- as No. 4 hazard, hidden hazard. And it states:  
10 Average of 12 deaths annually from window cords. To the right  
11 it reads: Children can strangle on window drapery and blind  
12 cords that can form a loop. Parents should use cordless blinds  
13 or keep cords and chains permanently out of reach of children.  
14 Consumers should cut looped cords and install a safety tassel  
15 at the end of each pull cord or use a tie-down device and  
16 install inner cord stays to prevent strangulation. Never place  
17 a child's crib or play pen within the reach of a window blind.

18           Now, do you disagree with --

19 A. Can you leave that up there, if you are going to ask me a  
20 question?

21 Q. I can do better.

22           MR. JAUREGUI: Can I approach the witness?

23           THE COURT: You may.

24 BY MR. JAUREGUI:

25 Q. You can take a look. You want to see it?



1 A. No, just if you are going to continue asking me a question  
2 following the statement, I just wanted it on the screen.

3 Q. Sure. I'll put it up.

4 Now, you understand that the U.S. Consumer Product  
5 Safety Commission is charged by law to determine whether or not  
6 a product constitutes an unreasonable risk of injury, yes?

7 MR. WILLIAMS: That misstates the law, your Honor. I  
8 object to that.

9 THE COURT: Why don't you ask him a question.

10 BY MR. JAUREGUI:

11 Q. Is one of the functions of the Consumer Product Safety  
12 Commission to determine whether a product constitutes an  
13 unreasonable risk to a consumer?

14 A. I think that the -- the -- I am not an expert in the law in  
15 the exact functioning or role of CPSC. I know that CPSC does  
16 serve as a watchdog function on consumer product safety and  
17 will often work with industry to identify hazards and work with  
18 industry to recall or to mitigate hazards.

19 Q. So you're not an expert on the law, the inner workings --  
20 strike that.

21 You're not an expert on the inner workings of the  
22 Consumer Product Safety Commission, correct?

23 A. I don't claim to be an expert on the regulations that  
24 govern the CPSC or the structure within the CPSC, no.

25 Q. You think a consumer -- do you think a commissioner that

1 spent seven years as a members of the commission would have  
2 that type of understanding in regulatory framework to  
3 understand what it takes to determine whether or not a product  
4 is unreasonably dangerous?

5 A. I don't think that's my determination --

6 MR. WILLIAMS: Objection. Calls for speculation.

7 THE COURT: You can answer.

8 BY THE WITNESS:

9 A. I don't think that's my -- my determination to make.

10 BY MR. JAUREGUI:

11 Q. So you are not going to answer the question?

12 A. I don't know what expertise other people may or may not  
13 have and how it might be relevant to any of the issues that are  
14 being discussed.

15 Q. All right. At any rate, for purposes of the analysis that  
16 you did in this case and determining that Hunter Douglas acted  
17 reasonably in light of the information that it had, you did not  
18 take into account the fact that the danger posed by window  
19 coverings is a latent danger, a hidden hazard?

20 MR. WILLIAMS: Misstates his testimony.

21 THE COURT: You can answer that question.

22 BY THE WITNESS:

23 A. I don't believe that is accurate. I certainly consider it  
24 in my analysis, the information available about people's  
25 knowledge of this hazard and the efforts made to raise this

1 awareness.

2 BY MR. JAUREGUI:

3 Q. If people don't know about a hazard, how can they guard  
4 against it?

5 A. Oftentimes people will take on behaviors that guard against  
6 a hazard without explicit knowledge of the actual hazard. But  
7 with respect to the issue at hand, there were a number of --  
8 there is a number of sources one can go to to find this  
9 information.

10 Q. Doctor, we'll get to the studies in a minute. I know you  
11 have them in your report.

12 Now, Dr. Sala, based on the same historical data you  
13 considered, did you believe that a jury can also decide for  
14 itself that Hunter Douglas acted reasonably by adopting and  
15 marketing safer designs like the PermAssure wand blinds, even  
16 as they continued to sell the corded vertical blinds?

17 MR. WILLIAMS: Objection, incomplete hypothetical.

18 THE COURT: Hold on for a second. I will let the  
19 witness go ahead and answer the question. I will take it for  
20 what it's worth.

21 THE WITNESS: Can you read back, please?

22 THE COURT: Go ahead.

23 (Record read as requested.)

24 BY THE WITNESS:

25 A. No.

1 BY MR. JAUREGUI:

2 Q. Why is that?

3 A. I think that -- I don't think that that is the -- I don't  
4 think that the jury would be able to reach a conclusion as to  
5 the issues at hand without a more complete understanding and  
6 scientific understanding of the historical analysis, as well as  
7 the human factors analysis, that goes into the reason --  
8 whether or not it was reasonable to continue to offer a -- a  
9 corded loop option for control in addition to the PermAssure  
10 wand.

11 Q. All right. Thank you.

12 You have other opinions in this case, is that right,  
13 Doctor? Let's take a look at your second opinion here.

14 The product functionality. In your second opinion on  
15 the second bullet, page 14 of your report, you are -- you have  
16 concluded that if Hunter Douglas offers only one product -- let  
17 me just read. I don't want to mess up your -- I don't want to  
18 get an objection from Mr. Williams here.

19 What is in summary fashion your second opinion as  
20 represented in this second bullet point?

21 A. That from a human factors standpoint it was reasonable to  
22 offer both the corded -- corded loop control mechanism as well  
23 as the PermAssure wand for the vertical blinds in question.

24 Q. Can you tell me what kind of data or studies did you look  
25 at to reach those conclusions?

1 A. Certainly. So a number of the studies I looked at related  
2 to -- to people's capabilities and limitations with respect to  
3 their abilities to reach their mobility, their physical and --  
4 their physical capabilities with -- in regards to fine motor  
5 controls, and also research on the -- what's known as the  
6 universal -- universal design, which is the principle behind  
7 trying to design products so that they are universally  
8 accessible to the aging population, as well as to -- to persons  
9 with disabilities and with diseases.

10 Q. If I understand -- if I understood, if we were to summarize  
11 some of the studies that you relied upon and you look at  
12 various studies, the basic premise -- the basic premise of some  
13 of those studies are as we age we lose the ability to do  
14 certain things. Fair enough?

15 A. I think that's consistent. It's a generalization, but that  
16 certainly is consistent with findings.

17 Q. All right. Do you think that a jury will not be able to  
18 understand as we age we lose the ability to do certain things?  
19 I mean, I can't do the things that I used to do when I was 30  
20 years old. Do you think a jury will not be able to understand  
21 that?

22 MR. WILLIAMS: Objection, calls for speculation.

23 BY THE WITNESS:

24 A. I believe --

25 THE COURT: Hold on. Go ahead. You can answer.

1 BY THE WITNESS:

2 A. I believe that I'm going to be speaking to the jury about  
3 how these -- these facts and how they relate to the design of  
4 products and how it relates to human factors design of  
5 functionality and usability with -- with products.

6 BY MR. JAUREGUI:

7 Q. All right. Fair enough. Let's talk about what you did  
8 specifically in this case. You told me when I took your  
9 deposition -- and you remember that, right? I took your  
10 deposition?

11 A. I remember you taking my deposition.

12 Q. All right. If I remember correctly, you told me that you  
13 had done essentially four things. See if I can remember them.  
14 One, you went out to stores and you look at displays of window  
15 coverings. You went into Home Depot, and you went to Lowe's  
16 store, correct?

17 A. I believe that we discussed when I went to Home Depot and  
18 to Lowe's to look at displays of --

19 Q. Do you remember doing that, right?

20 A. Yes.

21 Q. Okay. And that was part of the research that you were  
22 doing to substantiate your opinions in this case, correct?

23 MR. WILLIAMS: Misstates his testimony. To reach his  
24 opinions, not substantiate.

25 THE COURT: Well, he can answer the question.

1                   Go ahead.

2 BY THE WITNESS:

3 A. That is one of the things that I engaged in in order to  
4 inform myself and to inform my opinions.

5 BY MR. JAUREGUI:

6 Q. All right. And how long did that take? You went to these  
7 two stores.

8 A. Again, I -- I don't have that clear of a collection as I  
9 sit here today. And I don't want to misstate my testimony.

10 Q. Did you have -- strike that.

11                   Did you take any notes? Did you chart your  
12 observations of the numbers of window covering blinds that you  
13 looked at and what their specifications were?

14 A. No, I don't believe that I took notes.

15 Q. All right. You also told me that you spoke to a  
16 representative of the industry. Do you recall that?

17 A. I recall -- I recall speaking to a representative from  
18 Hunter Douglas.

19 Q. When you said -- we'll get to the Hunter Douglas  
20 representative in a minute.

21                   You told me that in addition to visiting two stores,  
22 that you had spoken to a representative of the industry, aside  
23 from Hunter Douglas. And we'll get to Mr. Jankoski in a  
24 minute.

25 A. I don't have a clear recollection of the testimony that you

1 are -- you are with referencing. If --

2 Q. Okay?

3 A. -- you like to show me it, I'll --

4 Q. We can go on.

5 So you went and looked at two stores, Home Depot and  
6 Lowe's stores. You also did some research online on the  
7 internet, did you not?

8 A. I -- yes, I -- I went on the internet.

9 Q. And you looked at some pictures of window covering blinds,  
10 is that correct?

11 A. Yes. I did investigate online how or where vertical blinds  
12 were most often depicted.

13 Q. I'm sorry? You --

14 A. Were often depicted.

15 Q. And I am going to show you the exhibit that I was  
16 complaining about earlier. Is this one of the pictures that  
17 you looked at from your research on the internet?

18 A. No. I believe that the -- the pictures here are from  
19 the -- from passages, the Hunter Douglas document that was  
20 produced in this case.

21 Q. When did you get these pictures?

22 A. These pictures, I am not positive when first the -- the  
23 document was passed along to me.

24 Q. All right. At any rate, so how long did it take you to do  
25 the research that you did on the internet to look at vertical



1 blinds and other blinds?

2 A. Again, I don't have an estimate, as I sit --

3 Q. Did you -- I'm sorry.

4 Did you document in any way the kind of research and  
5 your observations as a result of doing that search on the  
6 internet?

7 A. Yes, I believe that I printed out as PDFs maybe just  
8 printed out the web pages that I visited. I believe that I  
9 brought those with me to my deposition.

10 Q. Okay. And what -- what did that information show, if  
11 anything? What did it tell you about people's preferences,  
12 consumers' preferences, for using one type of vertical blind  
13 versus another?

14 A. I don't believe that I used those images to address that  
15 issue.

16 Q. So what did you use the images for?

17 A. The images similar to these were depicting the types of  
18 windows in the environment in which a window vertical blind is  
19 used.

20 Q. Okay. And those pictures, your understanding, vertical  
21 blinds with cords are most often used in a setting in homes  
22 known as common areas?

23 A. I think that they are consistent with -- with the idea that  
24 vertical blinds are often located in common areas and on large  
25 bank of windows or sliding doors.

1 Q. And in fact, the photograph that we have displayed on the  
2 monitor there, it shows some of the uses of vertical blinds,  
3 correct?

4 A. Yes, I believe that the images are -- there are three  
5 images of vertical blinds.

6 Q. All right. So --

7 THE COURT: Counsel, we have to break here in a little  
8 bit. So I don't know whether this is a good stopping point, or  
9 whether you want a couple more questions.

10 MR. JAUREGUI: I think this would be a good stopping  
11 point, Judge.

12 THE COURT: Okay. I am sure we will be able to  
13 restart right where we left off.

14 Very good. So let's go ahead and take our lunch break  
15 now. We will reconvene at 1:00 o'clock.

16 MR. JAUREGUI: Okay. Thank you, Judge.

17 THE COURT: You may step down until then. And please  
18 don't discuss your testimony with anyone in the meantime.

19 Thank you.

20 THE WITNESS: Thank you.

21 (Hearing recessed until 1:00 o'clock p.m. of the same day.)  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JOSE M. PADILLA, as the Special ) Docket No. 09 C 1222  
Administrator of the Estate of )  
MAXIMILIAN PADILLA, )  
Plaintiff, )  
v. ) Chicago, Illinois  
HUNTER DOUGLAS WINDOW ) August 21, 2013  
COVERINGS, INC., ) 1:00 o'clock p.m.  
Defendant. )

VOLUME 2  
TRANSCRIPT OF PROCEEDINGS - DAUBERT HEARING  
BEFORE THE HONORABLE JOHN Z. LEE

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1 (Proceedings had in open court:)

2 THE COURT: So when we took your break, you were about  
3 40 minutes into your voir dire. And so I will go ahead and  
4 provide you with 20 minutes from here on out when you start.  
5 And then with that, let's continue with the examination.

6 MR. JAUREGUI: Thanks.

7 THE COURT: Mr. Sala, I want to remind you that you  
8 are still under oath.

9 THE WITNESS: Yes.

10 JOSEPH SALA, DEFENDANT'S WITNESS, DULY SWORN

11 CROSS-EXAMINATION (Resumed)

12 BY MR. JAUREGUI:

13 Q. Hi, Mr. Sala.

14 When we left off we were talking about the things that  
15 you had done to prepare your opinion on the -- on the second  
16 point and your second opinion. And that is -- find my place  
17 here -- whether or not it was reasonable for Hunter Douglas to  
18 continue to offer both blinds to consumers.

19 And you had told us that you had gone to visit two  
20 stores. We went over that. And we were at the point where I  
21 had asked you and you had told me that you spoken to an  
22 industry representative.

23 Do you recall that?

24 A. I remember we just discussed that. And I had represented  
25 that to my recollection I had only spoken with a Hunter Douglas

1 representative, and I didn't remember my exact testimony over  
2 that. During the lunch I did review the deposition testimony  
3 where I think you -- that you were referring to. You had asked  
4 me if I had consulted and talked with anyone. And I did say an  
5 industry representative.

6 We later went on and talked about my conversation.  
7 That was actually with Mr. Jankoski from Hunter Douglas. So I  
8 believe the confusion here is, when I referenced that in the  
9 deposition they were one and the same. The industry  
10 representative was the Hunter Douglas representative.

11 Q. Okay. Fair enough. We can move on. Thank you for that.

12 Did you ask Mr. -- Who is Jankoski, Mr. Jankoski?

13 A. He -- he is employed by Hunter Douglas. Off the top of my  
14 head I can't remember his exact title.

15 Q. Is he one of the vice presidents?

16 A. He very well might be. I'm not positive.

17 Q. And so you talked with him. And after you talked to him,  
18 he confirmed your understanding that vertical blinds are most  
19 often used or are better designed to be used in common areas --  
20 better designed to be used in common areas?

21 A. Well, he -- that was the crux of our conversation was how  
22 vertical blinds are used, where they're used. And he provided  
23 information to that effect that, yes, vertical blinds are most  
24 often employed in either common areas or sliding glass doors,  
25 large banks of windows. That because of how they operate, they

1 are not particularly well suited to windows that open in a  
2 vertical fashion, information such as that.

3 Q. So is -- do you know if Mr. Jankoski has a background on  
4 human factor analysis?

5 A. I am not positive what Mr. Jankoski's background or  
6 education and training is.

7 Q. Did you ask Mr. Jankoski whether or not he had looked any  
8 data when he offered to you that information that you just  
9 relayed to us?

10 A. The particulars of the conversation and the -- if there  
11 were precise mentions of data sources, I don't recall at this  
12 time. He -- my understanding is that he has been employed by  
13 Hunter Douglas and involved in the design of window coverings  
14 for a number of years. And he's relating to me his experience  
15 and understanding of the industry.

16 Q. Did you ask whether or not there were any studies that  
17 Hunter Douglas had done indicating whether consumers in fact  
18 had more propensity or a tendency to use vertical blinds in  
19 common areas than other areas of the household?

20 A. I don't recall if I asked that specific question or not.

21 Q. Do you know if there is any such data reflecting on the  
22 consumer preference for use of vertical blinds at the house?

23 A. I am not aware of the type of data that you are  
24 referencing.

25 Q. All right. Would that have been relevant to your opinion

1 in this case?

2 A. Well, I -- the issue was something I certainly considered  
3 and tried to gather data, tried to consult with industry  
4 sources. Mr. Jankoski -- I also examined the availability of  
5 these products, depictions of these products. And given the --  
6 the information I was provided, I came to a conclusion that  
7 that -- that is consistent with all sources of those  
8 information, that vertical blinds are typically in the common  
9 rooms, these large banks of windows, sliding glass doors. And  
10 that would be the typical environment for them.

11 Q. But you never seen any data reflecting that -- that  
12 consumer preference study?

13 A. The consumer preference for that?

14 Q. Yes.

15 A. I am not aware of any.

16 Q. And you did not do any independent studies to determine  
17 whether or not in fact people have a preference for installing  
18 vertical blinds in common areas versus other areas of the  
19 house?

20 A. I -- I did not perform a preference study, no.

21 Q. All right. So as I understand it, then you only have four  
22 things that you did in arriving at your conclusion that  
23 vertical blinds are more commonly used or more frequently used  
24 in common areas of the house. No. 1, you went to Home Depot  
25 and Lowe's, and you looked at the -- Lowe's and you looked at

1 the display of window coverings, correct?

2 A. That is one of the things I did, yes.

3 Q. No. 2, you also looked at the internet, and you looked at  
4 some pictures. And the pictures that you looked, you saw the  
5 depiction of vertical blinds being used in common areas. Fair?

6 A. I -- I looked at the depictions and also the product  
7 offerings, yes.

8 Q. And then you had a conversation with Mr. Jankoski. And he  
9 essentially confirmed what you had already formulated in your  
10 mind, that indeed consumers who purchased vertical blinds,  
11 those vertical blinds are more often than not installed in  
12 common areas. Fair?

13 A. I -- he also provided data that was consistent with -- with  
14 that --

15 Q. What --

16 A. -- consistent with my -- what I expressed in my report.

17 Q. Can you please tell the Court specifically what type of  
18 data he provided to you?

19 A. Data, information. He provided the same information as I  
20 relayed earlier, that because of the functioning of these  
21 blinds, they are particularly well suited for oversized  
22 windows, for large banks of windows, for sliding glass doors.  
23 And that typically they are employed in common rooms of the  
24 house where you would have these sorts of installations.

25 Q. Did he give you a percentage of the number of vertical



1 corded blinds that are used in consumers' homes in common areas  
2 versus the percentage of the wanded vertical blinds that are  
3 used in non-common areas?

4 A. The -- I'm sorry. Which blinds are we comparing there in  
5 our percentages?

6 Q. Window vertical blinds with cords and vertical blind with a  
7 wand.

8 MR. WILLIAMS: Vague at least as to time. I am not  
9 sure when we are talking about.

10 BY MR. JAUREGUI:

11 Q. At any time.

12 A. During that conversation he did not. I don't recall him  
13 sharing that with me.

14 Q. So he just gave you some information?

15 A. He provided me with information about the -- where and how  
16 vertical blinds are typically installed.

17 Q. The time when Ms. Davis in this case, the lady who  
18 purchased the blinds, whether she was asked where she intended  
19 to place the blind?

20 MR. WILLIAMS: Objection, vague. Asked --

21 THE COURT: Overruled.

22 BY MR. JAUREGUI:

23 Q. Did you ask Mr. Jankoski -- let me withdraw that question.

24 Do you know whether or not anyone asked Mrs. Davis at  
25 the time when she purchased the blind where she intended to

1 place them?

2 MR. WILLIAMS: Assume someone spoke to her. The  
3 testimony is that she doesn't recall if anyone did speak to  
4 her.

5 THE COURT: I think the question is whether he is  
6 aware of any.

7 You can answer that question.

8 BY THE WITNESS:

9 A. I am not aware of any information to that effect.

10 BY MR. JAUREGUI:

11 Q. Are you aware of any data, any information, marketing  
12 information, from Hunter Douglas indicating that these vertical  
13 blinds should be installed on -- in common areas rather than  
14 bedrooms?

15 A. Are you asking whether there is information that -- that  
16 they should be installed in one location versus another?

17 Q. Yes, whether you had ever seen that information.

18 A. I haven't seen anything like that.

19 Q. So what is the scientific basis of your opinion to arrive  
20 at the conclusion that vertical blinds are more often installed  
21 in the homes in common areas in the house?

22 A. The basis for -- for that -- for that conclusion would be  
23 the data that I gathered with respect to my own investigation,  
24 my investigation of product offering in stores that sell window  
25 coverings, in speaking with an industry representative, a

1 Hunter Douglas representative, that had experience with this --  
2 with this industry. And also in looking at this product  
3 offering, vertical blinds, how it was being sold and  
4 represented on the internet.

5 Q. In 1995 what information did you have as to where and how  
6 vertical blinds should be installed?

7 A. I can't state that in 1995 I had that information. I don't  
8 remember. Don't recall at that time.

9 Q. So you really had no basis to formulate that opinion other  
10 than your visits to the store, your research on the internet,  
11 and your conversations with Mr. Jankoski?

12 MR. WILLIAMS: Objection, vague. Which opinion are we  
13 talking about now?

14 BY MR. JAUREGUI:

15 Q. The second opinion, your opinion that vertical blinds are  
16 most commonly installed in common areas.

17 MR. WILLIAMS: We are mixing and matching. That's --

18 MR. JAUREGUI: It's -- let me withdraw that question.

19 BY MR. JAUREGUI:

20 Q. You did significant research here, according to what you  
21 just told us. And one of the opinions that you formulated in  
22 your mind was that vertical blinds are more commonly used in  
23 common area. Is that fair?

24 A. That is part of my analysis. That's part of my  
25 understanding of the use of the product. I don't think that I

1 have phrased that as summary opinion in this case.

2 Q. All right. But you used that information to determine what  
3 type of interaction a user would have with that product, did  
4 you?

5 A. Well, that was a piece of information that was relevant.  
6 And the use of this product in those sorts of environments was  
7 one of the things that would factor into the -- the analysis of  
8 this. But the -- that's not the sole basis.

9 Q. All right. You are a scientist, correct?

10 A. Yes, I am.

11 Q. So if someone tries to replicate your study, how would they  
12 go about doing that?

13 MR. WILLIAMS: Objection, vague.

14 BY MR. JAUREGUI:

15 Q. Your findings that vertical blinds are more commonly used  
16 in design for use in common areas.

17 A. I think that somebody could replicate that in -- by using  
18 similar methods, by using methods of observation, by cataloging  
19 instances in which these products are offered, and how they are  
20 depicted. In the speaking with industry representatives that  
21 have experience and gathering their knowledge.

22 Q. But you didn't do such study here, right? You did not  
23 document your findings in any way, shape or form?

24 A. I believe that we are -- we are speaking about my -- my  
25 analysis now. And we spoke about it at deposition. I

1 incorporated it into my report.

2 Q. Fair enough. We will move on.

3 Now, in your second opinion, what is the essence of  
4 your second opinion, Doctor? So I do not misrepresent your  
5 testimony here.

6 A. I believe you have asked me about the second opinion. And  
7 I think that what I stated previously was that given a human  
8 factors evaluation, it was -- and from a human factors  
9 perspective, it was reasonable for Hunter Douglas to offer both  
10 the continuous loop control mechanism as well as the PermAssure  
11 wand at the time of manufacture of -- at this point.

12 Q. Did you do any ergonomic studies to determine which  
13 vertical blind is easier to use in this case, the one with the  
14 wand versus the one with the cords?

15 A. I think that my human factors evaluation and when you  
16 consider the human factors evaluation --

17 Q. No, with all due respect --

18 MR. WILLIAMS: Excuse me. May he be allowed to answer  
19 the question please, even if counsel doesn't like the answer?

20 THE COURT: Why don't you go ahead and ask him the  
21 question again.

22 BY MR. JAUREGUI:

23 Q. The question is, did you do any ergonomic studies in  
24 comparing the usage between a vertical blind with cords versus  
25 a vertical blind with a wand?

1 A. I performed the human factors analysis of the two different  
2 types of products.

3 Q. And where is the data?

4 A. The -- I explained my analysis earlier. I explained the  
5 analysis in deposition. And I also explained it in my report.  
6 I -- this is an evaluation of the different control mechanisms,  
7 the barriers to use that each may have given the environment  
8 and the users. These involve -- these express which design  
9 mechanism may or may not be easier for a variety of user  
10 populations to use under given situations.

11 Q. All right. Did you hire a group of people of different  
12 ages to perform the functions and evaluate whether for a  
13 90-year-old person it would be easier to use the vertical blind  
14 with a wand versus a 90-year-old person being able to use the  
15 blind with a cord and chain?

16 A. That type of a -- of an experiment or study that you are  
17 explaining is not necessary.

18 Q. In doing your analysis that you did in this case, how many  
19 vertical blinds did you take into account to do the comparative  
20 analysis of vertical blinds with cords versus a vertical blind  
21 with a wand?

22 A. I compared the types of interactions that would be required  
23 for vertical blinds with wands versus vertical blinds with  
24 cords. Such an evaluation and human factors analysis does not  
25 require an actual physical model of this. In fact, there are

1 such a range of products and range of ways in which it might be  
2 installed, that it would limit the utility of any one given  
3 study as you're describing it.

4           Rather what the -- the human factors field and the  
5 publications within it and the research within it give our  
6 considerations to the types of interactions that one is  
7 expected to have, and where these interactions express  
8 limitations for certain user populations or in certain  
9 environments.

10 Q. Doctor, I don't have much time. What data specifically do  
11 you have to reflect on your opinions that there are certain  
12 limitations for certain segments of the population if Hunter  
13 Douglas is only to produce vertical blinds with a wand?

14 A. There are a number of sources that I cite in my report and  
15 I brought with me to deposition. I have them here.

16 Q. All right. Doctor, let me just --

17           MR. WILLIAMS: Excuse me. Could he please be allowed  
18 to finish his answer.

19           THE COURT: You can go ahead and finish that answer.

20 BY THE WITNESS:

21 A. One of the sources is older adult data. This is a  
22 compendium of physical limitations in size, reach and strength.  
23 It catalogs the abilities of the older population, how this  
24 changes over time. And also the proportion of certain aspects  
25 of the population that have either disabilities or are aging to

1 the point of disability.

2           There is also a document, the universal design file,  
3 which is a -- a book or an article that is -- is put forward as  
4 how to consider the aspects of user population, specifically  
5 related to aging and diseased or disabled persons. And how to  
6 consider with specific reference to mobility, arm reach,  
7 strength, auditory and visual perception, a variety of the  
8 types of capabilities and limitations from the human factor  
9 science.

10           There is also additional information that I have as to  
11 the change in people's abilities over time with respect to  
12 strength, and importantly the fine motor skills of someone.  
13 There is an article in the Journal of Neurology, critical  
14 decline in fine motor hand movements in human aging, that  
15 catalog the types of detriments one would expect, and how this  
16 is different for a ballistic action which might be a reach of  
17 one's arm and gross motor movement in one direction, versus  
18 something that is manipulated about the fingers in a twisting  
19 motion like use of a wand to adjust the tilt of the veins.

20 Q. Doctor, do any of the studies have anything to do with  
21 window covering blinds, with the operation of window covering  
22 blinds?

23 A. Yes, I just explained how they would have relevance to the  
24 operation of --

25 Q. Okay. Did any of those studies deal directly with the



1 force that is necessary to operate a window blind with a wand  
2 versus the force and the dexterity and the mobility that is  
3 required to use a window blind with cords?

4 A. None of these studies were directly on window blinds.

5 Q. And for this -- for this case, to support your opinions,  
6 you did not do an independent analysis to determine what type  
7 of force, what type of mobility, what type of dexterity, is  
8 necessary for someone to use in order to be able to operate  
9 either of the blinds, did you?

10 A. I stated what I did with respect to the analysis of the  
11 blinds, in the functionality and operation of the blinds,  
12 vertical blinds, in general with respect to the two different  
13 control mechanisms. I also stated that I did not bring people  
14 in to do an experimental study with any single design.

15 MR. JAUREGUI: Judge, I am going to ask that you can  
16 indulge me for a few minutes. I am trying to move as fast as I  
17 can. But I am getting very long answers. That's fine. He is  
18 entitled to answer the questions. But the Court would indulge  
19 me --

20 THE COURT: Sure.

21 MR. JAUREGUI: -- couple minutes here. Thank you.

22 BY MR. JAUREGUI:

23 Q. One of the studies that you used was a study that was done  
24 in the UK, right, the United Kingdom, the plate force. Do you  
25 recall that?

1 A. Yes, I believe that some of the data was collected in the  
2 United Kingdom.

3 Q. All right. Do you know whether that study has ever been  
4 used in any court of law in the United States?

5 A. I have to -- off the top of my head, I don't know whether  
6 it was used in a court of law.

7 Q. So as I understand it, the study when you and I talked  
8 about it in your deposition, individuals were asked to apply  
9 some force to a plate or a device. Is that fair?

10 A. You are describing a typical means of collecting force and  
11 strength data.

12 Q. And that study, that work, was done in a controlled  
13 environment, was it not?

14 A. Yes, oftentimes when we are collecting this sort of data,  
15 it's done in some sort of controlled environment.

16 Q. You have never seen the vertical blind in this case, have  
17 you?

18 A. The incident blind?

19 Q. Yes.

20 A. No, I have not.

21 Q. And you never asked the blind -- that you could see it?

22 A. I've never seen it, no.

23 Q. And you don't know how the size of it is, do you?

24 A. Well, I -- we have measurements from the record.

25 Q. Okay. So I tell you 70 inches, the head railing is 70

1 inches long. All right.

2 I'm going to stop with that. You criticize -- rather  
3 your opinion on bullet point No. 3, you indicate basically that  
4 Ms. Davis and Ms. Roberts understood the potential hazards  
5 associated with the cords attached to the window blinds. And  
6 according to your scientific research, that no amount of  
7 information or warnings could have altered their behavior in  
8 this case, is that correct?

9 A. It states there is no scientific reason to believe that  
10 additional or alternative warnings or safety information would  
11 have altered their behavior.

12 Q. All right. As you sit here today, do you know for a fact  
13 whether or not the blind at issue had any warnings of any type  
14 at the time it was sold to Ms. Davis?

15 A. I think that there is testimony that it did. However, the  
16 warnings associated with it haven't been produced.

17 Q. I'm sorry. I didn't catch your last?

18 A. The hangtag that was stated would have accompanied it has  
19 not been produced.

20 Q. All right. And you've never seen any warnings that Hunter  
21 Douglas was using in 1995 on vertical blinds, have you?

22 A. I have not seen -- I have not seen that warning, no.

23 Q. Best case scenario that we have here is, Mr. Rubinoff  
24 testified that he believed that Hunter Douglas was using a  
25 hangtag. Do you remember that?

1 A. I believe that's the testimony, yes.

2 Q. And Mr. Rubinoﬀ also testified that the hangtag was not  
3 permanent, that it was designed to be removed?

4 A. Yes.

5 Q. And in fact, Ms. Davis testified that she didn't recall  
6 whether or not it had any signs. But if it had any signs, any  
7 hangtags, that she would have removed them. Do you recall  
8 that?

9 A. Yes, I remember that testimony.

10 Q. And she also said if the headrailing had had any warnings,  
11 as long as they didn't show it she would have left them alone?

12 A. I think she said that if it didn't show she would have left  
13 them alone.

14 Q. You don't have any reason to doubt her testimony, do you?

15 A. With regards to her testimony and those factual references?  
16 No.

17 Q. And you know that at the time when the police investigated  
18 this incident shortly after it occurred, the window covering  
19 involved in this case had no warnings of any type, correct?

20 A. My understanding is that it didn't have a label on it.

21 THE COURT: Counsel, I will give you about five more  
22 minutes.

23 MR. JAUREGUI: Okay.

24 BY MR. JAUREGUI:

25 Q. So if the window blind had no cords -- had no warnings at

1 the time that it was sold to Ms. Davis of the danger of the  
2 strangulation hazard, how is she supposed to know about the  
3 danger?

4 MR. WILLIAMS: Misstates the testimony that he just  
5 referred to. So it's an incomplete hypothetical.

6 THE COURT: You can go ahead and answer the question.  
7 BY THE WITNESS:

8 A. Can you restate the question?

9 BY MR. JAUREGUI:

10 Q. If the subject blind had no warnings at the time that it  
11 was sold to Ms. Davis, how is she supposed to know about the  
12 danger of strangulation from window covering cords?

13 A. Well, I believe that Ms. Davis testifies that she was aware  
14 of this, and that she was aware through a variety of sources  
15 she mentioned, that she had seen it on the news, that it was  
16 common sense -- she gives a number of reasons in her own  
17 deposition as to why she was aware of this hazard.

18 Q. All right. Ms. Davis issued an affidavit in this case.  
19 You are aware of that, correct?

20 A. I am aware of that.

21 Q. And in that affidavit she stated, she was not -- she was  
22 never offered an option of a vertical blind with a wand. That  
23 if that option had been offered to her, for safety reasons she  
24 would have chosen the blind with the wand. And you dispute  
25 that. You did not agree with that?

1 A. As I state in my opinion, there is no scientific reason to  
2 believe that such information would have led to a behavior  
3 change.

4 Q. And that's based on your studies that you produced?

5 A. That's based on the warning studies that I referenced  
6 before, the culmination of the science behind behavioral  
7 change, and the provision of safety information, as well as her  
8 testimony at deposition and some of the things that she -- she  
9 made reference to, how she used and what she already knew, and  
10 her familiarity with the product.

11 Q. And basically the third opinion and fourth opinions are  
12 pretty much the same, except that you are dealing now with Mr.  
13 and Mrs. Padilla, is that right?

14 A. I think that they both -- they are both addressing the  
15 allegation that additional information would have changed these  
16 opinions.

17 Q. Okay.

18 A. Or would have changed their behaviors. I apologize.

19 Q. Let me get to the point here. Objectively the only fact  
20 that you have in this case to tell this Court that no amount of  
21 warnings would have altered the behavior of the Padillas and  
22 the outcome in this case is a television set that was in Max's  
23 room, isn't that right?

24 A. No.

25 Q. I'm talking about facts. The only fact that you have in

1 this case is the television set that was in Max's room.

2 A. No, that's one example from their testimony that puts them  
3 in line with the scientific literature as to people's  
4 compliance with warnings. But there is additional information.

5 Q. All right. And you state in your opinions, in your  
6 analysis of this case, that because Max was concerned about the  
7 TV falling in Max's room, and they failed to remove the TV from  
8 his room, that that shows how they would have reacted to  
9 warnings had there been any warnings on the window blind.  
10 Is -- that's essentially the connection you are making here,  
11 correct?

12 MR. WILLIAMS: Misstates his testimony. Go ahead.

13 BY THE WITNESS:

14 A. I don't think that that characterizes what -- how I used  
15 that information and what I say with that information.

16 BY MR. JAUREGUI:

17 Q. What significance to you is the fact that there was a TV in  
18 his room and the TV was not removed from the room?

19 A. I -- it demonstrates that his behaviors and actions are  
20 consistent with those that you would expect from the public at  
21 large, the people in which the studies have been -- have been  
22 conducted. There is no evidence in the record that makes the  
23 Padillas in any way out of the ordinary with respect to how  
24 people notice and behave in response to warnings. In fact,  
25 when you look, it lines them -- it aligns them more with the

1 subjects in the studies where warnings were either not noticed  
2 or not complied with.

3 Q. So because of that, you reached the conclusion that in this  
4 case no amount of warnings would have altered the behavior of  
5 the Padillas, and the outcome would have been the same,  
6 correct?

7 A. I believe that I stated my opinions in my report, and I  
8 have read it into the record here today, that there is no  
9 scientific reason to believe that additional or alternative  
10 warnings or safety information would have altered their  
11 behavior.

12 MR. JAUREGUI: I am almost done, Judge. I promise  
13 you. One last question here.

14 BY MR. JAUREGUI:

15 Q. Now, essentially what you did here is the phenomenon of  
16 inattentive blindness.

17 A. That is a cognitive term that I think can help illustrate  
18 to people how it might be that very conspicuous and obvious,  
19 quote unquote, obvious things that are in front of us might  
20 escape our actual perception.

21 Q. And in fact, that's one of the studies that you relied in  
22 formulating these opinions in this case?

23 A. Well, it's something that I referenced in order to explain  
24 that phenomenon that I just described.

25 Q. And so it is essentially the failure of people to perceive



1 their surroundings and the way how they respond to?

2 A. That -- that -- that is covered by that.

3 Q. All right. In that study --

4 THE COURT: You are running out of time. You promised  
5 me one question a while ago.

6 MR. JAUREGUI: This is the question. This is --

7 BY MR. JAUREGUI:

8 Q. I am going to show you, Doctor, the study that you  
9 referenced -- that you referenced in your opinion. And it  
10 says: Unresolved questions. The research describing this book  
11 is incomplete. It raises more questions than answers. And the  
12 explanations we provide are not fully adequate. Nevertheless,  
13 we choose to describe it now rather than wait for a fuller  
14 understanding, because that understanding may never be  
15 achieved, at least not in the near future. And the phenomenon  
16 of inattentional blindness seems sufficiently important so that  
17 the interest in it ought not to depend on the particular theory  
18 employed to explain it.

19 Isn't the fundamental principle of inattentive  
20 blindness is that people have to see what is the study in this  
21 case, you know, looking at a dot or a square on the computer  
22 screen, and they failed to see it. And then they label that as  
23 if it's there in the studies, people should see it. If they  
24 don't see it, then you use the theory of inattentive  
25 perceptions?

1 A. You are describing -- this -- this quote is taken from a  
2 chapter in a book, and it describes some of the very early  
3 research. I believe the first research that describes this  
4 phenomenon. But there has been -- there has been work since  
5 then as well that helps to characterize when and how this  
6 phenomenon occurs.

7 And there are other studies, ones that I have already  
8 referenced, that -- that describe this as well.

9 Q. If the Padillas did not know that the risk of strangulation  
10 existed in the window covering cords because it was latent,  
11 what are they supposed to do?

12 MR. WILLIAMS: Objection, that's argumentative.

13 THE COURT: Sustained.

14 MR. WILLIAMS: -- question for this witness.

15 THE COURT: Sustained. Any more questions?

16 MR. JAUREGUI: No.

17 THE COURT: Counsel, you have ten minutes for  
18 redirect.

19 MR. WILLIAMS: Thank you, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q. Dr. Sala, just a few things to touch on. Let's go  
23 backwards in order. And I am taking the most recent first.

24 Specifically this issue with respect to the  
25 information that you have in particular from Mr. and Mrs.

1 Padilla's depositions about their behavior and in particular --  
2 I am not a scientist, but your scientific term is, safety  
3 information seeking behavior or the lack of it. Was it simply  
4 the presence of a TV in Max's room that was of relevance to  
5 you?

6 A. No, no.

7 Q. What did Mr. Padilla say about that that was important to  
8 you?

9 A. Well, there is various portions of his testimony that  
10 relate to information seeking both his and actually Mrs.  
11 Padilla's as well. They describe a number of their actions and  
12 behaviors through their pregnancies and birth of their children  
13 that -- that that -- that are -- that would place them into a  
14 category of non-information seeking. They give a number of  
15 different citations within the testimony that describe how they  
16 did not seek additional information. They didn't consult with  
17 physicians or pediatrics about safety concerns or issues in  
18 having a child.

19           They did not consult with any sort of outside source  
20 for common safety issues in childhood or infancy. The -- when  
21 asked about the types of -- the types of controls over the  
22 child's environment that they employed, I believe the -- the  
23 response related to trying to make sure that there were not --  
24 there were not outside pests or insects that were allowed in  
25 the summer to be around the children. But no reference or no

1 mention to the typical source of control devices that help to  
2 protect children from injurious scenarios.

3           And finally, the television and the nightstand  
4 demonstrates a -- both a response to one's own safety concern  
5 and examples from the literature. The TV was a safety hazard  
6 that Mr. Padilla had evaluated and come up with on his own. It  
7 was one that he himself had assessed as a safety concern in the  
8 room.

9           And when asked what he -- he said that he would take  
10 care of it. He was constantly concerned over it. But the  
11 actions he took were not to remove it or to remove the hazard  
12 in and of itself, do something of a permanent nature, but that  
13 he would just take care of it.

14 Q. He testified that he appreciated the risk, always worried  
15 about it, yet never did anything about it?

16 A. Correct.

17 Q. Okay. The question that you got about Ms. Davis, the  
18 purchaser of these blinds. You are aware of her testimony that  
19 she didn't know if she bought these blinds or this blind on  
20 line or by telephone. And in any event, even in the affidavit  
21 that counsel requested that she sign, makes no reference to an  
22 individual that she spoke to. She simply says, and without any  
23 more context, that she wasn't made aware of any option of the  
24 wand.

25           Even if you assume all that to be true, and even if

1 you assume that she did in fact speak to some independent  
2 dealer and wasn't provided with that information, do you  
3 believe, based upon the information that you have and what you  
4 just testified to, that she would have behaved any differently  
5 if she had been told of that option?

6 A. No, I do not.

7 Q. And you explained the reasons for that?

8 A. Yes.

9 Q. Do you need to bring a group of 90-year-olds or any portion  
10 of the population in to do an evaluation of the relevant  
11 ergonomic factors that go into your opinion that there are  
12 certain situations in which a wand is simply not a viable or  
13 perhaps even safe option for operating vertical window blinds?

14 A. No, I do not.

15 Q. Other than seeing how manipulating yourself a wand, a cord,  
16 a chain, and gaining an understanding of how vertical blinds  
17 are used, do you need anything more in order to apply  
18 principles of human factors to determine whether or not there  
19 is some part of the population that will either prefer or  
20 perhaps even need to have the cord and chain option available  
21 to them?

22 A. I base that on my education, training, experience, and the  
23 available research studies in human factors.

24 Q. Okay. Now, with respect to the suggestion that the jury  
25 knows that as people get older they get less strong. They get

1 perhaps less dexterous. And the suggestion that you don't add  
2 any value or any expertise in helping a jury understand that.  
3 You answered counsel's questions that you believe you did bring  
4 value to that.

5 Can you explain why that is. Why should you be  
6 allowed to testify and explain to a jury those facts?

7 A. Certainly. I think that this is under-appreciated by -- by  
8 lay people, the relevance of actual study, actual observation  
9 of use. These are principles in human factors that allow us to  
10 incorporate expertise into the design, and that's something  
11 that the typical or layperson does not have as a background or  
12 as a perspective.

13 This is -- I think, if you allow me, there is a  
14 passage in the universal design file, one of -- one of the  
15 sources that I cite, that explains this. In a -- in their  
16 introduction in the history of universal design, it's written:  
17 These demographic changes result in a population that is older  
18 and more disabled than many realize. And these trends  
19 continue. The limitations imposed by products and environment  
20 designed and built without regard to these needs and rights of  
21 all Americans citizens are significant but often unrecognized.

22 Q. Okay. Final point, Dr. Sala. You were asked some  
23 questions, I think, about what you did to determine what  
24 percentage of vertical blinds are used in common area rooms  
25 versus other room. First of all, you know from this case and

1 there are other instances that it's not exclusively for common  
2 rooms. They can be used in bedroom, correct?

3 A. Correct.

4 Q. And in this case you simply noted, I think -- it turned  
5 into an opinion somehow, but you noted that more often vertical  
6 blinds will be used in common area room and frequently on over-  
7 sized windows.

8 Does it matter to any of your opinions in this case  
9 whether 60 percent or 80 percent or for that matter 30 percent  
10 of vertical blinds are used in common area rooms, such as  
11 living rooms and dining rooms or elsewhere?

12 A. The exact breakdown and percentage is not the issue here.  
13 It's the use of this product and the fact that this is a common  
14 environment for use. That's what affects its functionality and  
15 its usability.

16 Q. Final question. Is there anything about a study  
17 originating out of the United Kingdom that makes it not  
18 relevant to you as a human factors scientist?

19 A. Certainly not with respect to hamstring.

20 MR. WILLIAMS: Thank you very much.

21 Thank you, your Honor.

22 THE COURT: All right. Thank you. I have some  
23 additional questions for Mr. Sala.

24 Mr. Sala, in response to questions by defense counsel  
25 regarding the first bullet point, that is the first opinion, as

1 to Hunter Douglas' actions during the time that -- your  
2 historical analysis, for lack of a better word. You said that  
3 your opinion -- actually you were asked the question and you  
4 answered in the affirmative, whether it was your opinion that  
5 the actions taken by Hunter Douglas were reasonable, prudent  
6 and safe.

7 Now, in my estimation, those three words mean  
8 different things. Do they mean different things to you?

9 THE WITNESS: The --

10 THE COURT: I'm focusing most on the third, safe. You  
11 are not -- are you offering an opinion -- I didn't think you  
12 were, but are you offering opinion that the actions of Hunter  
13 Douglas during that time were safe, versus being reasonable or  
14 prudent?

15 THE WITNESS: I think that it's -- the opinion work  
16 supports mostly be -- be reasonable. Now, if it's phrased in  
17 the way that the -- it provided a reasonable degree of safety  
18 for the inclusion of that option, certainly I think that that  
19 is supported in a reasonable sort of calculation for that  
20 opinion.

21 THE COURT: So I just want to make sure I understand.  
22 So when you mean that the actions were safe, is what you mean  
23 that when you take safety considerations into account as well  
24 as the other things that you took into account, the actions  
25 were reasonable?



1 THE WITNESS: Yes.

2 THE COURT: So it's not your opinion that the actions  
3 themselves were safe. But the actions were reasonable when you  
4 considered safety as one of the factors.

5 THE WITNESS: Yes.

6 THE COURT: I just want to be clear as to what he will  
7 or will not testify to.

8 MR. WILLIAMS: That's a very good questions, your  
9 Honor.

10 THE COURT: Secondly, with regard to your review of  
11 the historical data, and by historical I mean the CPSC data,  
12 the reports in the '90s, '80s, '90s, as you discussed. You  
13 said that in addition to reading the materials, you did your  
14 own independent analysis of historical data.

15 What sort of independent analysis did you do?

16 THE WITNESS: I have reviewed the actual in-depth  
17 investigations, so the underlying data that the CPSC was  
18 working off of in their investigations and cataloging. I have  
19 also reviewed, I am familiar with it, both the timeline and  
20 sequence of it as well as the content.

21 THE COURT: So other than just reviewing the  
22 underlying data, did you do any other sort of independent  
23 analysis that would implicate your expertise?

24 THE WITNESS: I'm sorry. Can I --

25 THE COURT: Sure. Anyone can review the data. You

1 know, for that matter, the attorneys can review the reports. I  
2 can review the reports. The jury can review the reports as  
3 well as the underlying reports.

4 When you say independent analysis, did you do anything  
5 else other than reviewing the reports?

6 THE WITNESS: Well, I think that -- that one of the  
7 things to appreciate there is that these in-depth  
8 investigations and that underlying data come through as not  
9 a -- not necessarily summary, but individual pieces of  
10 information throughout the report. And what I've done is  
11 actually catalog them and tallied them and looked at them  
12 for -- from the standpoint of what sort of pattern or analysis  
13 emerges when you look at these, either standing back all at  
14 once or in a cumulative fashion.

15 It's also you need to understand some of the database  
16 and intricacies of the database itself. What type of  
17 information is entered into different databases, how it's  
18 gathered, how it's gathered over time, because that has  
19 changed. And as this -- this -- this hazard has -- the  
20 understanding of it has developed over time, so too have some  
21 of the reporting mechanisms for it.

22 And so when evaluating, what you could extract from  
23 the database at a time, you do need the experience or the  
24 expertise in those databases and in that sort of analysis.  
25 That's something that I've been doing for -- for years since

1 I've been at Exponent.

2 THE COURT: And so that would help you to kind of  
3 decipher what the data means. What independent analysis did  
4 you do to then come to the conclusion that the actions were  
5 reasonable?

6 THE WITNESS: Well, I put this into perspective of the  
7 hazard and its understanding. So one of the things is that --  
8 that is at issue is the idea that -- or at least as being  
9 expressed in some of the opposing expert reports that I was  
10 asked to evaluate, was that a -- a -- forget the actual term,  
11 but a cursory review of this data would have revealed other  
12 hazards. And that should have been focused or received more  
13 attention.

14 And when you look at this data, what was available  
15 from it as it was developing, and you understand the focus of  
16 that and what the data is -- actually the underlying data is  
17 telling you, you can evaluate whether or not a response to that  
18 and whether or not the focus on something like horizontal  
19 blinds or pull cords was reasonable given the factors of what  
20 data you have available, what impact it would have had on the  
21 underlying hazard, and what control mechanisms or what sort of  
22 engineering solutions you would have immediately available to  
23 you and what you need to focus on maybe at a later date or  
24 separately from that.

25 THE COURT: Okay. And what you're at least telling me

1 is that that's -- you did all that analysis in coming to -- you  
2 looked at the alternatives that were available at the time, the  
3 technology that was available at the time, as well as all the  
4 other things that you mentioned, when you came to your  
5 conclusion that the actions of Hunter Douglas were reasonable?

6 THE WITNESS: That's work that I engaged in to reach  
7 that opinion. Also before this matter, I have been engaged in  
8 researching this area and child hazards. And I was familiar  
9 and have had familiarity with these databases and with this  
10 data before this -- this incident.

11 I incorporated some of the -- the knowledge that I  
12 gained through my exposure to these databases and this -- this  
13 potential hazard, but then focused it with respect to the issue  
14 related to vertical blinds, and focused it with respect to the  
15 time frame that we are discussing here.

16 THE COURT: Now, with regard to the fourth bullet  
17 point, that is your opinion as to the Padillas. Is there a  
18 standard protocol that one uses in your field when you try to  
19 assess whether or not a particular individual would be prone to  
20 regard or disregard the warning, a warning sign, as opposed  
21 to -- well, let me ask you that first.

22 THE WITNESS: So there are models put together, and  
23 there are frameworks. I cited one in my report. I included  
24 that article in the materials and referenced it. And it walks  
25 through many of the things I discussed here today, that you

1 look at how the information was conveyed, what information was  
2 available. But then you look at the personal -- the personal  
3 factors and -- of the receiver of that information, and the  
4 product that that person would be receiving it from.

5 And based on that comparison to the available data and  
6 what we know about the individual person, we could extrapolate  
7 from the scientific research to people's behavior and come up  
8 with a -- an estimation of whether there is scientific reason  
9 to believe whether or not additional information would have  
10 changed people's behavior.

11 THE COURT: Can you refer me to that protocol you are  
12 talking about?

13 (Brief pause.)

14 THE WITNESS: So the article that I was specifically  
15 referencing here is the article, What Is a Warning and When  
16 Will It Work.

17 THE COURT: Okay. I guess what I am trying to get at  
18 is, when you are -- because I know you testified about the  
19 general research in the area of warnings and whether or not  
20 people comply and statistical analysis. But I guess I am more  
21 focused on when you are trying to -- what I for lack of a  
22 better word diagnose an individual, right? Perform a study on  
23 individuals. Say basically this individual is -- this  
24 individual in my scientific estimation just won't obey any  
25 warning signs.

1           Are you familiar with any protocols that set forth  
2 how -- what steps a clinician is supposed to take to try to  
3 arrive at such a diagnosis or conclusion?

4           THE WITNESS: And I think that that --

5           THE COURT: I think this talks more about kind of  
6 factors to look at, right? I am wondering more about  
7 procedures.

8           THE WITNESS: And I -- sorry to disagree. But the  
9 article does set forth the framework of the relevant factors to  
10 consider and in a procedural manner. And so with knowledge of  
11 that and the scientific literature that backs that, I do  
12 believe that that is the procedure and the -- the model or  
13 framework that I followed to reach the -- or to apply what we  
14 know in this case to the available research and literature.

15           Also just I'm not reaching opinion that no safety  
16 information would ever affect the Padillas' behavior. I am  
17 addressing this with the additional alternative information  
18 that's being suggested too that would have been included with  
19 the blind as they existed in their home. It's -- I am not  
20 saying that the Padillas would never follow or act safely in  
21 any capacity across a range of products, but rather trying to  
22 apply it to this instance.

23           THE COURT: So what you are saying -- and let me ask  
24 you this question: So are you saying that in this case what  
25 you'll testify to is that the Padillas -- had there been a

1 warning on the vertical blinds, that the Padillas had the type  
2 of -- personalities probably isn't the right word, but are the  
3 type of people that would have disregarded whatever warnings  
4 would have been on the vertical blinds?

5 THE WITNESS: I think that -- that what my testimony  
6 would be is that had there been a warning on there,  
7 situational, environmental and personal factors relevant to the  
8 Padillas would lead to my scientific opinion and my scientific  
9 evaluation that they would not notice or heed that warning.

10 THE COURT: And that's based upon your background as  
11 well -- aside from your background from your review of their  
12 depositions?

13 THE WITNESS: Review of their depositions, review of  
14 the scientific literature surrounding warnings, my experience,  
15 education, training.

16 THE COURT: Okay. There was one other question I had.  
17 You said that Mr. Padilla recognized that the TV in the room  
18 posed risk. What is your understanding as to what was the risk  
19 that he was concerned about?

20 THE WITNESS: I believe that he referenced that he was  
21 afraid that the TV would fall on his son. Now also again, this  
22 is related more to the perception of risk. Turns out that is a  
23 reasonable hazard to be concerned about. I think even in the  
24 hidden hazards that -- that were presented on that screen, one  
25 of them was TV falls and tip-overs.

1           But the point was that -- that this was a perception  
2 of risk he had himself, he had developed, and his response to  
3 it as testified.

4           THE COURT: Any follow-up questions from counsel?

5           MR. JAUREGUI: Yes, Judge.

6           THE COURT: No?

7           MR. JAUREGUI: No. That's fine.

8           THE COURT: Okay. You may step down. Thank you.

9           THE COURT: All right. Let's now proceed to arguments  
10 as to the motion. Plaintiffs will have 20 minutes, defendants  
11 20 minutes, and then plaintiffs will have five minutes  
12 rebuttal.

13           MR. WILLIAMS: Your Honor, if I may have 30 seconds, I  
14 think Dr. Sala is going to depart the courtroom, not stick  
15 around.

16           THE COURT: Okay.

17           (Brief pause.)

18           (Witness excused.)

19           MR. JAUREGUI: May it please the Court, you heard  
20 the testimony from Mr. Sala. I will comment briefly as to the  
21 second, third and fourth opinions, and -- and then proceed with  
22 the argument.

23           There is no doubt Mr. Sala is qualified to testify as  
24 an expert. It's -- I don't think that's an issue here. The  
25 issue is whether he is testified as an expert in this



1 particular case. He certainly has many credentials. His  
2 report on this case has more citations than a law review  
3 article. The question --

4 THE COURT: Depends on the law review article. But go  
5 ahead.

6 MR. JAUREGUI: That is true. If it's from Harvard,  
7 could be longer.

8 The question remains whether the methodology that he  
9 used in this case meets the standard of Daubert in the Seventh  
10 Circuit. And I submit to the Court that it doesn't. You know,  
11 the reason why I asked Dr. Sala about the basis for his opinion  
12 on the functionality of the product, because it's important,  
13 the study that he had done to determine whether if Hunter  
14 Douglas knew about a known risk, a deadly risk, whether it was  
15 reasonable for Hunter Douglas to continue to offer it to  
16 consumers, both options.

17 And Dr. Sala concludes that it was reasonable for  
18 Hunter Douglas to continue to do so because if Hunter Douglas  
19 only offered the wand with the -- excuse me -- the vertical  
20 blind with the wand, it would have limited the usage of the  
21 population, because there is some limitations that would  
22 inhibit the use. And his understanding is that most of the  
23 vertical blinds are designed for use in the common areas.

24 There is a reason why he is using that information and  
25 why that is his theory, because in common areas he figures,

1 well, if the family is in the family room, you know, a child is  
2 not supposed to be unattended. There's supposed to be someone.  
3 There is parental supervision. People are supposed to be  
4 watching him there.

5 If on the other hand, the blinds are installed in a  
6 child's room, then his understanding is that -- and it's Hunter  
7 Douglas' understanding that he is trying to sell to the Court  
8 here that they are really not designed for -- for usage in a  
9 kid's room. And the reason why they don't want to go there is  
10 because, you know, children can be left unattended in the  
11 bedroom.

12 And the question, the ultimate question, that we need  
13 to ask in this case is, if a parent -- if the parents, in this  
14 case the Padillas, who clearly loved their child, if they  
15 cannot have -- if they do not feel their child is safe in their  
16 own bedroom, then I don't know what -- whether -- where they  
17 are going to get that sense of safety about the safety of the  
18 child.

19 The issue here is whether or not the Padillas were  
20 aware of the risk. It was a latent defect. It's a latent  
21 risk. The Consumer Product Safety Commission has already  
22 adjudicated that issue. Dr. Salas has relied on the data from  
23 the commission. But yet, he disagrees on the categorization  
24 from the commission on that issue, even though that is by law  
25 what the commission is charged with.

1           He has not taken that into account. He said, what he  
2 does for purposes of the analysis is that he goes out there.  
3 And whether or not the use of this product is limited to a  
4 certain segment of the population -- and he has to go to the  
5 functionality of the product. Okay? It's a legal theory.  
6 It's a legal grounds to allow someone to testify on this issue.  
7 I understand that.

8           The problem that we have with that opinion is that I  
9 tried to press him, and the Court heard his answers.  
10 Essentially he did three things -- well, four things. He went  
11 to Home Depot. He went to Lowe's store. He went on the  
12 internet. And he talked to Mr. Jankoski.

13           I asked him whether or not he had done any independent  
14 studies, ergonomic studies, in this particular case to  
15 determine how is it that a functionality of a window blind is  
16 used or affected by different segments of the population, in  
17 this particular case. There are no studies. Hunter Douglas  
18 doesn't have that data. If anybody should have that data, it  
19 would be Hunter Douglas before they put it out.

20           I mean, if they're saying, well, you know, this is  
21 designed for common room areas, you know, certainly there is no  
22 evidence that has been brought to light on that issue. Yet  
23 that is one of -- that is the research that he did on this  
24 case. That is not scientific research. I tried to ask him, if  
25 someone tries to replicate your research, what would they have

1 to do? I doubt that anybody can do that because practically  
2 what we would have to do in order to replicate that is to get  
3 into his head. He didn't take any notes. He didn't know what  
4 data. The Court doesn't know what data he got from -- from  
5 Lowe's or from Home Depot.

6 So there is absolutely no information on that issue.  
7 There is no basis for that opinion. And that opinion, that  
8 work that he did, the methodology that he used to get to his  
9 opinion that because the functionality of the product is  
10 affected, there is no basis for that.

11 He doesn't know how much force it takes to operate a  
12 wand blind versus one that is corded. And if he is going to  
13 stand here before the Court and say, there are some limitations  
14 that accompany a vertical blind with a wand, then he better be  
15 prepared to show the Court what kind of data he is relying on.  
16 There is none of that stuff. He didn't show any data. So his  
17 methodology is not supportive of his opinion in this case, on  
18 that opinion.

19 The issue of whether or not any -- let me read from  
20 that. The last sentence of his fourth opinion: There is no  
21 scientific reason to believe that additional or alternative  
22 warnings -- I don't know what he's talking about here. That  
23 statement is assuming in their alternative that the window  
24 blind already had some warnings. Or additional, in addition to  
25 what?

1           You know, your Honor saw the headrail of the window  
2 blind. There are no warnings. If there was a warning, if we  
3 want to give the benefit of the doubt here to Hunter Douglas,  
4 and there is no factual basis for that -- but let's just assume  
5 that at the time when it left the control of Hunter Douglas or  
6 the fabricator that made his blind, that it had a hangtag. We  
7 know from representatives of Hunter Douglas, Mr. Rubinoff  
8 specifically, that the window blind -- that the tag, the  
9 warning, was designed to be removed.

10           So if that's the only warning and it is removed, it's  
11 installed at a home. Five, seven days -- five, seven years  
12 later the Padillas buy that house. The window blind is in  
13 perfect working order. They have no reason to remove it. They  
14 begin to use it. They have never seen any warnings. They  
15 never received any literature from Hunter Douglas.

16           Ms. Davis did not receive any warnings from Hunter  
17 Douglas saying, hey, by the way, as time as gone on, now we  
18 have learned that there are these problems with our blinds.  
19 They never received any warnings from the Window Covering  
20 Safety Association or from the Window Covering Manufacturing  
21 Association.

22           There is no evidence that either Ms. Davis, Ms.  
23 Roberts, the owner of the house, or the Padillas ever received  
24 any data. Yet what does he do? Looks at a TV. And he says,  
25 because of the way how Mr. Padilla or the Padillas interacted

1 with the TV, that tells him -- he's transferring that  
2 information had if there been any warnings it would have not  
3 altered the outcome of this case. That's just sheer  
4 speculation. There is absolutely no basis for that.

5 THE COURT: Didn't he also say that he reviewed the  
6 depositions and testimony about whether or not they used other  
7 safety devices to kind of childproof their home?

8 MR. JAUREGUI: I believe he did that, Judge. I  
9 believe he testified as to that. But the particular object --  
10 the only objective object that we have in this case is the TV.  
11 And when I asked him -- not here but when I asked him in his  
12 deposition, he didn't know how big the TV was.

13 He was aware that neither of the Padillas had ever  
14 seen little Max trying to reach out for the TV. They tried to  
15 keep it away from him. And in fact it was away from his bed.  
16 It was not like it was over his head. I mean, they took  
17 whatever precautions. As they related, as he related to the  
18 TV, they took whatever precaution they thought was appropriate.

19 Now, what Mr. -- what Dr. Sala does not tell the Court  
20 is that after this incident occurred, the Padillas removed all  
21 the window blind coverings from their house. And that is a  
22 critical issue here because if they did that, that means that  
23 contradicts his whole testimony in this case, because then that  
24 tells you that they -- that once a danger became known to them,  
25 they reacted to it. They took action. And what is it that

1 they do? They removed the window blinds. They had no reason  
2 to do that before. Why? Because they had no idea that it  
3 presented a danger to the child.

4 He is not an engineer. He's never designed any window  
5 coverings in this case. So he really doesn't have the  
6 qualifications to support his opinions in this case.

7 The issue of Ms. Davis and Roberts, you know, the  
8 issue of warnings are pretty much applicable. The arguments  
9 that I made to the Court are pretty much applicable also as  
10 to -- as to their argument. Ms. Davis, you know, they're  
11 saying -- he's saying -- it's important to know that he's  
12 saying that Hunter Douglas was -- acted reasonably in offering  
13 to consumers both options.

14 Ms. Davis is telling the Court that she was never  
15 given that option. So if she's never given that option, then  
16 the conduct of Hunter Douglas here is not reasonable. They  
17 cannot prove and there are no documents here that at any given  
18 point she was given the option to choose one of those two  
19 blinds. And in fact, she said that if given that option, she  
20 would have chosen the one with the wand.

21 How am I doing on time, Judge?

22 THE COURT: She says that in her deposition or in her  
23 affidavit?

24 MR. JAUREGUI: In her affidavit.

25 THE COURT: So tell me about this affidavit. Tell me

1 about these affidavits. So did the people -- so I take it  
2 there are -- there are how many affidavits?

3 MR. JAUREGUI: There is -- well, in her affidavit for  
4 Ms. Davis, only one affidavit. And during the course of her  
5 deposition, those questions were not asked. Counsel had  
6 opportunity. They were not asked.

7 THE COURT: They weren't asked by either side?

8 MR. JAUREGUI: Either side.

9 So I spoke with Ms. Davis, and I asked her, look, this  
10 is -- this is the posture of your deposition here. If -- and  
11 she -- and I asked her, if you had been given an option with a  
12 wand, would you have chosen it? She said, absolutely, I would  
13 have chosen that. So that is her affidavit.

14 I know that counsel has raised issues about, you know,  
15 being hearsay and all these things. But she will be here to  
16 testify. In fact, they already booked her flight to come in  
17 and testify for the trial. So she will be here. So counsel  
18 will have every opportunity to cross-examine her on those  
19 issues.

20 As to the first, you know, whether or not Hunter  
21 Douglas acted reasonably in light of the information, the  
22 historical background, what was going on at the time, the  
23 standards available, the state of technology, all of those  
24 things, that's a little bit difficult for me to comment on it  
25 because I think Dr. Sala made the perfect case to permit Mr.



1 Statler to testify as an expert in this case.

2 THE COURT: Well, let me ask you this. I guess the  
3 other question would be, why doesn't Mr. Statler suffer from  
4 the same infirmities that you believe that Mr. Sala suffers  
5 from with regard to the first opinion?

6 MR. JAUREGUI: Judge, that's why I premised my point  
7 that there is not much that I can say about his opinions on  
8 that issue.

9 THE COURT: It seems -- would you agree that it seems  
10 that they both would rise or fall together with regard to that  
11 particular opinion?

12 MR. JAUREGUI: To some extent I do agree with the  
13 Court, Judge. But there are some things, some additional  
14 things, that Mr. Statler did in this case that Dr. Sala say  
15 that he did but I did not see it, like considering the risk of  
16 injuries, severity of the injury, the vulnerability of the  
17 population, and all of these factors that Mr. Statler went on  
18 to testify about. And even though Dr. Sala said that he did  
19 that, I don't see the data for that. I did not see any  
20 reference in his report to those issues.

21 THE COURT: You still have five, six minutes.

22 MR. JAUREGUI: All right. I am ahead for once.

23 THE COURT: You don't have to use all the time.

24 MR. JAUREGUI: I realize. I am just checking my notes  
25 here.

1 THE COURT: You have an opportunity to rebut, too,  
2 so --

3 MR. WILLIAMS: Or cede it to your opponent.

4 MR. JAUREGUI: I reserve whatever time I have for  
5 rebuttal.

6 THE COURT: Very good.

7 MR. WILLIAMS: Thank you, your Honor.

8 Let me start with something that I didn't think I  
9 would be starting with on the argument on Dr. Sala, your  
10 question about Brenda Davis' affidavit. You keep hearing it.  
11 I don't know if you've seen our motion in limine with respect  
12 to it. Let me take a minute and a half to put it in  
13 perspective.

14 In deposition what she did testify to, as I've said or  
15 mentioned in a couple questions, was that she didn't recall  
16 where she bought the blinds, who she bought them from, the  
17 manner by which she bought them, whether it was online or  
18 telephone, and certainly didn't recall speaking to anyone since  
19 she didn't know whether she bought them online or not. So she  
20 established that she has no recollection of the circumstances  
21 of that transaction.

22 After that deposition counsel realizes that there is  
23 an issue in the case, or he thinks there is an issue in the  
24 case, that it would be helpful to be able to say that she  
25 wasn't offered an option of this wand at the time she purchased

1   them because the wand was made available, and that's a problem  
2   for their case.

3               So he goes back to Ms. Davis, asked her if she'll sign  
4   an affidavit stating that she -- and she -- it's very careful.  
5   She doesn't say that she spoke to anyone. She doesn't identify  
6   who she spoke to or who it was that she spoke to who should  
7   have offered her a wand, had a duty to offer her a wand, or  
8   anything. She simply says, I was never offered a wand. Of  
9   course, she doesn't say as part of this transaction that I  
10   can't recall anything about, including whether it was online.

11              So the hearsay problem here isn't Ms. Davis. Ms.  
12   Davis can be here in flesh and blood. That's not the hearsay  
13   problem, and our motion in limine addresses it. It's her  
14   attempt, or counsel's attempt, to have her testify that there  
15   was a transaction, and that she recalls enough of it that she  
16   can say somebody didn't offer her a wand.

17              First of all, she doesn't know if there was an in-  
18   person or telephone transaction, but most importantly, she  
19   cannot identify the speaker. And it's not the speaker who said  
20   something; it's a speaker who didn't say something that they  
21   want to say should have; and that is, you got a wand as an  
22   opinion.

23              THE COURT: But, Mr. Williams, that seems like a  
24   perfect opportunity for cross-examination of Ms. Davis here  
25   when she is in court.

1           MR. WILLIAMS: It is if she is allowed to testify, but  
2 I can't imagine how she could testify, your Honor, to what she  
3 has in her affidavit because the first question asked of her, I  
4 will be up objecting on the grounds that it's hearsay. She is  
5 offering the absence of a statement from an unidentified party  
6 who's not in court and couldn't even be made to come to court  
7 because we can't tell who it is.

8           So no ability to cross-examine the person that she  
9 wants to say is the important speaker or non-speaker here.  
10 That's the issue with respect to Ms. Davis.

11           So we are here on a Daubert hearing for Dr. Sala, and  
12 I'll try to turn back to that.

13           I will address the warnings issues at the end, partly  
14 counsel's comments, partly your Honor's questions. All any  
15 expert can do, if they are found to be qualified on a subject  
16 such as this, is talk about what the literature says. We can  
17 say about how people would likely respond. You have to  
18 identify the population. You have to say it's fair to include  
19 the Padillas in this population of people who these studies  
20 tell us see, do not strike with this hammer, and a hundred  
21 percent of the time go ahead and strike with the hammer and  
22 ignore the warning. That's all he can do.

23           If he is qualified and if he's applied the rigor to  
24 the analysis to determine that these studies are relevant, then  
25 all he or anyone else can say is that it is a matter of

1 probability that the Padillas fall within the group of people  
2 who have been studied, who have been shown not to heed warnings  
3 or to only heed warnings to this extent.

4           The suggestion that you can make such a claim personal  
5 to the Padillas is not how human factors or frankly other  
6 psychological and social sciences work. And they make  
7 predictions. And all they can do is say, this is what people  
8 likely would have done.

9           The reason that's an issue in this case, and it is in  
10 any failure to warn case, is because of the ease with which a  
11 plaintiff can come in and say, hey, lousy warning. No warning.  
12 Should have been a better warning. And if so the accident  
13 wouldn't have happened.

14           If they prove that the warning was inadequate, that's  
15 half of the game. But the other half of the game is causation.  
16 And that's where -- even though the burden should be on the  
17 plaintiff to prove, and if there had been a better warning I  
18 would have behaved differently. But the testimony on that  
19 subject is usually a fairly self-serving, of course I would  
20 have done something differently. It's not supported by any  
21 experts. No testimony from -- from their experts.

22           So it's incumbent upon me, the defense in the case  
23 such as this, to come in and ask for an expert to evaluate.  
24 Say, okay, is this reasonable or not? If there had been a  
25 different warning, you know, play devil's advocate. If there

1 had been another warning here, would that likely have affected  
2 these people's behavior. His opinion is that it's not. The  
3 only question here for today is, has he applied the scientific  
4 method of his science in the proper manner to get there.

5           And on that subject, I have to say that counsel  
6 doesn't have much of a sense of irony. After hearing from  
7 Dr. Wright yesterday, who basically upon being given his  
8 assignment in this case and asking what kind of blind it was  
9 and being told it was a vertical blind with a continuous loop,  
10 announced and concluded that it was a defective and  
11 unreasonably unsafe product. To suggest that what we heard  
12 from Dr. Sala here about how he went about his task somehow  
13 doesn't meet the scientific method, to me is pretty remarkable.  
14 He came prepared to not only describe in a general way that he  
15 relied upon research. But I asked him to bring with him  
16 examples so he can cite them to counsel, show them to your  
17 Honor what he did consider.

18           And beyond the examples that he has, he's cited  
19 publications, provided them to counsel in his report and in his  
20 deposition. So they have an ability to cross-examine him on  
21 those, and that's fair game for trial.

22           But the question here is, is he qualified to testify  
23 at trial? And on the warnings issues, which I will lump  
24 together for sake of brevity, I think it's clear that he has  
25 done -- he is the only expert in the case who has done the

1 research and applied the scientific methodology in order to  
2 form his opinions. And counsel can cross-examine him. But I  
3 think Dr. Sala jumps way over the bar set by Daubert for the  
4 admission of his testimony in that regard.

5 With respect to your question about opinion No. 1 --

6 THE COURT: Actually, before we get there, can I  
7 interrupt my own question?

8 MR. WILLIAMS: Absolutely.

9 THE COURT: With regard to opinion No. 2, I believe  
10 that Mr. Sala said that what he was testifying was that it was  
11 reasonable for Hunter Douglas. And I just want to make sure I  
12 am clear what he is talking about.

13 When he said it was reasonable for Hunter Douglas to  
14 have offered consumers options as to the control mechanisms for  
15 the subject blinds, I thought he testified that it was  
16 reasonable for Hunter Douglas from a human factors perspective  
17 to offer consumers options as to the control mechanisms for the  
18 subject blinds. Is that an accurate description of what his  
19 testimony is going to be?

20 MR. WILLIAMS: I'm going to ask the question back to  
21 you because I want to make sure I understand --

22 THE COURT: Well --

23 MR. WILLIAMS: -- qualifying from a human factors  
24 perspective.

25 THE COURT: Well, or is he concluding that as a legal

1 matter it was reasonable, for example, for Hunter Douglas to  
2 have offered consumers options as to control mechanism for the  
3 subject?

4 MR. WILLIAMS: I think I understand, and I think it's  
5 a third maybe in between. I think he is saying that from a  
6 responsible manufacturer's standpoint, it was reasonable to do  
7 so. He doesn't presume -- I am very careful to keep experts  
8 such as him away from legal conclusions, because I don't think  
9 that's where they belong. I think where he provides his value  
10 to the case is that he brings the human factors discipline of  
11 course. But that discipline encompasses matters related to the  
12 safety of consumer products, among other things.

13 So as an expert in the safety of consumer products,  
14 looking at a manufacturer who supplies consumer products, it's  
15 his opinion that based upon his expertise it was reasonable for  
16 them to do so. He's not involved or didn't get involved in  
17 this case in matters of cost or things like that.

18 But as I said before, that's -- those are issues that  
19 are common in products liability cases. They are not here  
20 because we manufactured the product that plaintiffs are saying  
21 we should have manufactured. They're left to argue, we  
22 shouldn't have continued to offer this other product. And he's  
23 explained why with his human factors background it was  
24 reasonable for a manufacturer to make that available to  
25 consumers.



1           And I think once again, he is the only expert who's  
2 applied any rigor at all to that analysis. He doesn't, you  
3 know, recite the safety is not an option, one death is too  
4 many, and all the nice, easy truisms that don't help us get to  
5 where we need to go in a case with complicated issues that  
6 involve safety and risk and balancing of those, which we do on  
7 an everyday basis. And I wasn't going to not get to point  
8 No. 2, because I think that's his most important opinion.

9           With respect to point No. 1 and your question about  
10 whether Mr. Statler and Dr. Sala and their proffered opinions  
11 on the -- what I call the historical reasonableness of the  
12 conduct or lack thereof up until '95 were responsible. Here is  
13 why I will suggest that while I agree that they're close in  
14 that regard, I don't think it's because of the quality of the  
15 analysis. I think it's because of how relevant that testimony  
16 is.

17           In other words, the jury here is looking at a product  
18 that was sold in 1995 and Hunter Douglas' conduct as it relates  
19 to that product. Frankly, to give an extreme example, I don't  
20 think it would be relevant if Hunter Douglas were the worst  
21 actor in the world on some other subject. Let's say they made  
22 axles for 18 wheelers or something like that. I don't think how  
23 they behaved in that regard would be relevant to this case  
24 unless that behavior carried over or affect it here.

25           Same thing on the historical window blind discussion.

1 It's -- it's relevant to the extent that it's tied in and there  
2 are interrelated issues of safety. But once again, we're not  
3 sitting here explaining why we didn't get around to offering a  
4 wand in '95 because we were too busy with the horizontal blind  
5 problem, the much bigger problem, before then. We had the  
6 PermAssure wand in 1995.

7           So there isn't any delay. There isn't any way, why  
8 didn't you get around to it sooner at issue here. And so I  
9 think really the testimony about the reasonableness of their  
10 conduct is sort of a good-citizen area of testimony that is of  
11 limited use, I would say, here.

12           Having said that, I think Dr. Sala has given a closer  
13 look to that. The CPSC experience, which is the only thing  
14 that Mr. Statler brings to a case like this, isn't relevant  
15 here. It's -- this is not a case involving the workings of the  
16 CPSC and their relationship with Hunter Douglas or industry.  
17 He is a lawyer. He is not a scientist of any sort. And he is  
18 the first to admit it.

19           And so that's why, and that's all I will say, about  
20 why I think you could allow Dr. Sala to testify on the first  
21 point and still find that Mr. Statler, especially with the  
22 inflammatory and argumentative background -- not just  
23 background but nature of his report, brings to bear on that  
24 issue.

25           THE COURT: Is there a dispute as to admissibility of

1 the CPSC reports?

2 MR. WILLIAMS: The IDIs?

3 THE COURT: And the various reports that Mr. Sala and  
4 Mr. --

5 MR. WILLIAMS: I am going to generalize and say, no,  
6 because -- but I'm going to go on and say, there isn't much of  
7 an issue with respect to notice or any of those things. The  
8 parties and the experts and the underlying witnesses for Hunter  
9 Douglas or some of the witnesses plaintiff may call may have a  
10 dispute about how many and how to characterize some of those  
11 incidents.

12 And I think my humble suggestion is that when it comes  
13 time for trial, you're going to have a judgment call to make as  
14 to how much of that is relevant, because we're not disputing.  
15 We were working on the strangulation risk and developing the  
16 PermAssure wand, among other things. So there is no dispute  
17 that there were enough incidents, it's whether 110, 170 or 15  
18 years or something in between. There were enough incidents on  
19 different products.

20 And one thing I want to say because it hasn't been  
21 highlighted. We're talking about products generally. The  
22 overwhelming, overwhelming, majority of those are nothing to do  
23 with Hunter Douglas. But because of the similarity of the  
24 products, we acknowledge they have some relevance with respect  
25 to notice.

1           But once again, notice in this case is a very minor  
2 issue, if it's an issue at all. We were working hard on this  
3 safety device, and we got it out before Ms. Davis purchased it.

4           THE COURT: And I guess I should be more specific  
5 about my questions. Is there a dispute between the parties as  
6 to admissibility when it comes to, for example, hearsay or  
7 authenticity or any of those objections with regard to the CPSC  
8 documents?

9           MR. WILLIAMS: Not of authenticity. Hearsay, it  
10 depends. There is a lot of information in them. And some of  
11 that information is not only summary but incomplete. And so  
12 if, for example -- I'm trying to answer your question. Please  
13 don't feel like you are cutting me off. Or do cut me off if I  
14 am not getting it.

15           But there are some areas of information where if a  
16 witness, for example, tried to come in and characterized it and  
17 say, there is 45 incidents out of the 110 that involved  
18 continuous loop cords on vertical blinds, then we would have an  
19 issue I am sure because there are going to be places where that  
20 information is so incomplete that the hearsay objection is  
21 going to be appropriate.

22           THE COURT: I see.

23           MR. WILLIAMS: I am talking big pictures, kind of  
24 broad brush. It's generally accepted by both parties.

25           THE COURT: Okay. I interrupted you. Go ahead.

1           MR. WILLIAMS: I think that says what I need to say on  
2 Point No. 1. I did forget to mention one thing on the warnings  
3 issue with respect to the Padillas. And again, this is more  
4 for trial, but counsel brings it up. So I think I need to  
5 respond to it.

6           He contrasted what he called the sheer speculation  
7 from Dr. Sala, patiently and carefully tried to explain the  
8 basis for his opinion that the Padillas probably would not have  
9 heeded any additional information, and how he came to that  
10 opinion. That's dismissed as sheer speculation. And then the  
11 single thing that counsel points to to support his claim that,  
12 in fact, they were safety-heeding individuals was that after  
13 their son died by strangulation on a window blind cord, they  
14 actually removed other window blinds from the house.

15           That to me is sadly not information that is helpful or  
16 relevant. Of course, you can't imagine anybody ever leaving  
17 some products that either posed a risk or brought back memories  
18 of losing a child like this around their house. That is not  
19 information that casts doubt on Dr. Sala's qualifications under  
20 Daubert to express his opinion on the warnings issue.

21           Finally, opinion No. 2, that it was reasonable for  
22 Hunter Douglas to continue to offer the product. In response  
23 to your question, I was really interested in that question and  
24 Dr. Sala's response. It's a great question, at the risk of  
25 sounding like I am pandering.

1           But reasonably safe is what is an issue in this case.  
2   And whether Hunter Douglas behaved in a manner that was  
3   reasonable entails in this case whether they behaved in a  
4   manner that was safe or reasonably safe. And in -- because I  
5   asked that question, as I am sure you noticed, more than once  
6   with that string of adjectives.

7           And I do equate them. If they are not identical, I  
8   think they are quite close in this case. And I didn't mean to  
9   make it a compound question because I think plaintiffs are  
10   going to argue in this case that Hunter Douglas did not act in  
11   a reasonable manner, that they -- another way of saying that is  
12   that they provided an unreasonably dangerous product. So I  
13   think they -- those issues are linked.

14           In asking him his opinions, I was intending to ask him  
15   whether he believes that they behaved in a reasonably safe  
16   manner. And -- but I think your question clarified that.

17           I don't think there could be a more careful analysis  
18   and one that applies to scientific methodology than what Dr.  
19   Sala went through in reaching his opinion. He did it step by  
20   step. He didn't get his first phone call from me and say, aha,  
21   this is a reasonably safe product, as Dr. Wright did on the  
22   other side.

23           He took his time. He looked at and added to his  
24   database of knowledge in reviewing additional IDIs beyond what  
25   he had already looked at in work before this case to

1 familiarize himself with a lot of those details down in the  
2 grass, with respect to the ways in which children have been  
3 injured and died on window blind -- corded window blind  
4 products.

5           And after doing that, and after explaining his  
6 methodology and after citing the literature that he relies upon  
7 so that counsel has an opportunity to fairly examine him on  
8 cross-examination and poke and prod and challenge, he reaches  
9 the opinion that he does that it was a reasonably safe thing,  
10 all things considered, for Hunter Douglas to continue to offer  
11 these two options.

12           That's what this case is about. Dr. Sala is the only  
13 witness who has even begun to do a careful analysis there. And  
14 I think what counsel's relegated to doing to try and chip away  
15 at that is instructive. He spent ten minutes on the fact that  
16 he went to Lowe's and talked to somebody from Hunter Douglas  
17 and looked at some online brochures, on the issue of how common  
18 it was for vertical blinds to be used in common areas. It's a  
19 more common place. It's a factor, but it's a fairly small one  
20 in his opinions in this case.

21           But it's clear that there aren't other areas in which  
22 Dr. Sala is subject to cross-examination, because he has taken  
23 such care. He has so painstakingly gone about doing his job in  
24 this case. And while I don't think it takes the contrast with  
25 Dr. Wright to make that point, I think the fact that we heard

1 from them on back to back days makes it very well.

2           So those are the four points. I tried to limit myself  
3 and Dr. Sala's testimony to the issues that are presented here  
4 today. It's hard to, you know, stay away from the merits a  
5 lot. I don't think we've been entirely successful in that  
6 regard.

7           With respect to Dr. Sala, he is, of course, supremely  
8 qualified. But it's not just his qualifications that make him  
9 a witness entitled to testify certainly on the second, third  
10 and fourth points. And I concede that the first one is one --  
11 an interesting one for you to consider.

12           But it's not his Johns Hopkins and Stanford pedigrees  
13 that I rely upon here. More significantly, it's how he went  
14 about his business. And I think he demonstrated today in the  
15 limited time that we had that he did that in a way that far,  
16 far exceeds the gate that needs to be cleared in order to  
17 qualify under Daubert and Kumho Tire, and that he should be  
18 allowed to testify at trial.

19           THE COURT: Okay. Thank you.

20           Rebuttal?

21           MR. JAUREGUI: The studies that Dr. Sala relied upon  
22 have nothing to do with the danger that window covering blinds  
23 present in this case. It has nothing to do with that issue.

24           It is interesting in this case that Dr. Sala was  
25 trying to emphasize in his review of the historical data that



1 most of the incidents in this case have occurred -- or come as  
2 a result of strangulation of kids from horizontal blinds.  
3 Plaintiffs here are not making that distinction as to whether  
4 the danger comes from a horizontal blind, from a vertical  
5 blind, from any kind of blind.

6 Plaintiffs' argument in this case is that the vertical  
7 blind was defective and it wasn't safe, and it was not  
8 reasonable for Hunter Douglas to continue to offer that option  
9 because of -- because it contained a looped cord. And looped  
10 cords is danger here. I want to make sure that that's the  
11 emphasis in this case.

12 The last sentence in his opinion that given the human  
13 factors, whether or not this product and the understanding of  
14 the hazards posed by vertical blinds it was reasonable for  
15 Hunter Douglas to have offered consumers options as to the  
16 control mechanism of the subject blinds. I think what the  
17 Judge was getting at on that issue is whether or not this is in  
18 fact a legal conclusion. And I believe it is.

19 I think the reasonableness issue, whether or not it  
20 was reasonable for Hunter Douglas, that is within the province  
21 of the jury. And that is for the jury to determine whether  
22 against that backdrop of history, what they knew, when they  
23 knew it, how they reacted -- whether or not in light of that  
24 knowledge that they had, the severity, the risk, the number of  
25 kids that have died, whether or not it was reasonable for

1 Hunter Douglas to continue to offer both blinds. And that's an  
2 issue for the jury to decide. That's a factual issue.

3 We have one major difference that permeates the  
4 analysis of his opinions. And he has to base his opinions on  
5 facts, the facts of this case. And the facts of this case are  
6 that we have a vertical blind that had a hidden danger. Every  
7 witness that I questioned, and we took quite a number of  
8 depositions, they either pretended not to know what a hidden  
9 danger is or what an open danger is.

10 But by the end of the day, that doesn't matter because  
11 the Consumer Product Safety Commission knows what a hidden  
12 danger is. And at the end of the day, that's what caused this  
13 tragedy here. It is the insufficiency of warnings, the lack of  
14 adequate warnings, and the fact that this was a latent defect.  
15 That's what's at issue in this case.

16 And in his analysis, Dr. Sala does not take into  
17 account the latency of the risk. He just, I -- my opinion is  
18 as reflected in my report.

19 I really have nothing else to add at this point. I  
20 will stop here.

21 THE COURT: Okay. Thank you.

22 Let's take a five-minute break before we proceed with  
23 arguments as to the Daubert motion with respect to Rose Ray.

24 MR. JAUREGUI: Can we make it ten, Judge, so I can get  
25 my act together here.

1 THE COURT: Yes, you are doing double duty today.

2 MR. JAUREGUI: Thank you.

3 THE COURT: Ten minutes.

4 (Brief recess.)

5 THE COURT: So let's proceed with argument as to  
6 plaintiff's motion with regard to the defense expert Rose Ray.  
7 You may proceed.

8 MR. JAUREGUI: Thank you, Judge.

9 At the outset, I want to advise the Court that we  
10 acknowledge that Dr. Rose is a highly qualified statistician by  
11 training, education and otherwise. And again, the issue is  
12 whether her qualifications meet the methodology that is  
13 required of the Court. And as a gatekeeper I am going to  
14 suggest to the Court that she does not, and her testimony  
15 should be kept out.

16 There are a number of problems with her analysis in  
17 this case. And essentially, what she was asked to do was to  
18 assess the risk of injury from common household products to the  
19 risk of injury to window coverings and other products from the  
20 commission.

21 If Dr. Rose is allowed to testify in this case, I  
22 don't think that plaintiffs would ever be able to prevail on a  
23 products case. This is a kind of case where there have been  
24 over 359 deaths by now of child strangulations from window  
25 covering cords, a dangerous product. The fundamental problem

1 that we have with the analysis of Dr. Ray is that in comparing  
2 window covering cords to the items that she used in her  
3 analysis, she didn't consider many of the issues that are  
4 before the Court. And let me just list the items that she  
5 compared window covering cords to.

6           They are essentially 11 items that she used in her  
7 analysis to determine that the risk of injury, the risk of  
8 fatality associated with window shade, Venetian blinds and  
9 indoor shutters with children ages zero to three is not  
10 elevated when compared to the risk of fatality associated with  
11 other common households.

12           THE COURT: Can I request that when both counsel read  
13 from a text, please slow down because --

14           MR. JAUREGUI: I'm sorry again.

15           THE COURT: It happens to everyone. It's a very  
16 natural thing because everyone has the document in front of  
17 them. And so the inclination is just to get through it. I  
18 understand that. I do that a lot too, as my court reporter  
19 will let you know. But if you could just, everyone, if you can  
20 just slow down when you are reading something, that would be  
21 very helpful.

22           MR. JAUREGUI: I have been warned, Judge. Thank you.

23           MR. SANTIAGO: Put it on the overhead too.

24           MR. JAUREGUI: So the items -- the items that Dr. Rose  
25 uses in her analysis are, No. 1, doors other than glass doors;

1 No. 2, glass doors, chairs, windows, sofas or couches, bathtubs  
2 or showers, tables, coins, stairs, steps, ramps and landings.  
3 No. 10, beds including bedsprings, bed frames, mattresses,  
4 bath -- bassinets or cradles, cribs, and toddler beds. And  
5 No. 11, bucket or pails.

6 THE COURT: I'm sorry. What is No. 11?

7 MR. JAUREGUI: Buckets or pails.

8 THE COURT: Got it. Thank you.

9 MR. JAUREGUI: The first question that the Court would  
10 ask in this case is, what in the world do any of those items  
11 have anything to do with a window covering blind? When I took  
12 the deposition of Dr. Rose, I asked her many questions. I  
13 asked her, for example, whether or not any of these items had  
14 any similarities with window blind cords. And her answer was,  
15 no.

16 When it came to doors, and I will go through a few of  
17 these items, the questions that she was asked: Do you know  
18 whether any of these doors had any strings? I think she may  
19 have answered, well, some doors may have strings.

20 Do you know whether any of the doors that you used in  
21 your study constitute an unreasonable risk of injury? She said  
22 she did not take that into account.

23 Do you know if the doors that you use in your analysis  
24 in this case, whether or not they contain any latent defects?  
25 She didn't. Any latent dangers? She said she didn't take that

1 into account.

2 When she was asked whether or not any of the doors had  
3 ever been recalled by the Consumer Product Safety Commission,  
4 she says that none of the objects that she used in her analysis  
5 had ever been recalled, except perhaps for certain cribs. Some  
6 may have been recalled at some point.

7 (Brief pause.)

8 MR. JAUREGUI: When she asked whether or not any of  
9 the doors that she analyzed, whether or not they had any  
10 defects, she said she didn't look at that.

11 I asked her questions as to each one of the items,  
12 glass doors, chairs, windows, sofas, couches, bathtubs. And  
13 her answer was always the same, that the only basis for using  
14 these items was because they were items that were commonly  
15 found in the home. No other justification for using her  
16 analysis.

17 A statistician has to be able -- or has to be required  
18 by a court of law to use a statistical -- if she is going to do  
19 a comparative risk analysis, there has to be some kind of  
20 similarity in the products that she is comparing. None of the  
21 items that are here have absolutely anything to do with the  
22 issues that are before the Court.

23 I asked her if her analysis that she had used in this  
24 case had ever been used by any court of law. And her answer  
25 was, no.

1           In preparing for this hearing, Judge, I was concerned  
2 that when I read her opening brief, oh, my god, we didn't cite  
3 a single brief, a single case, in challenging her opinions  
4 other than Daubert and Kumho. And when I read defendant's  
5 opinions, defendant's answer to our brief, there is not a  
6 single case that they cite in support of the proposition for  
7 the reason that Ms. Rose should be allowed to testify in this  
8 case. There are no cases.

9           This is the first time that Dr. Rose is intended to  
10 use this type of analysis in a defected products case, to say  
11 that because the -- because there is a higher rate of injury  
12 from common household products, that that is a justification in  
13 this case. I don't understand exactly what she is trying to  
14 justify. But the comparison that she is trying to do here is  
15 that essentially the window covering blinds are not dangerous  
16 because when you compare the risk of injury to other common  
17 household items, the risk of injury is not elevated. As is the  
18 risk of injury is not elevated; therefore, you know, the window  
19 covering blind, the issue in this case, did not constitute an  
20 unreasonable risk of injury.

21           She does not deal with the issue -- I asked her, you  
22 know, whether or not any of the items that she used in her  
23 analysis presented any type of unreasonable risk of injury.  
24 And she says that's not important to her analysis.

25           So she is comparing items that most of the items --

1 any parent would know, any member of the jury would know, that  
2 if a child gets on top of a chair and the child falls down,  
3 that's an open and obvious danger. I think most of the jurors,  
4 most members of the jury, would be able to understand that any  
5 risks that stem from any of these items are open and obvious.

6 She has used in her statistical analysis, however, to  
7 say that because there are more injuries that occur because  
8 more children, thousands of children, are injured, are  
9 hospitalized or died when they come -- when they interact with  
10 any of these products, that therefore her analysis as a  
11 statistician is saying that there is -- the window covering  
12 blinds do not represent a higher risk of injury. And if they  
13 don't represent a higher risk of injury, therefore, you know,  
14 the conclusion must be that they are not unreasonably  
15 dangerous.

16 The problem that we have with that analysis, Judge, is  
17 that it's going to confuse the jury. It is utter confusion. I  
18 don't know how the jury is going to read that.

19 The issue here under Illinois law is that it doesn't  
20 matter how many cases you have. If there is an unreasonable  
21 risk of injury, if you have an unreasonable dangerous product,  
22 and the manufacturer knew about that risk at the time when it  
23 left his control, then that is sufficient basis for the  
24 plaintiff to establish that the product was unreasonably  
25 dangerous.



1           Now, when we asked her whether or not any of the  
2 products could be made safer, well, a chair is a chair. It has  
3 four legs. I don't know how many more legs you can put on it  
4 to make it safer. None of those products that she uses in  
5 her -- in her analysis had the option of making those products  
6 safer, was there a component that these products would be  
7 safer.

8           We have here a situation where the window covering  
9 blind was defective, at least by plaintiff's allegations,  
10 because of the loop cords. And we have an alternative here  
11 that it would have been a lot safer if Hunter Douglas had only  
12 offered that alternative to the consumers at this point. That  
13 is not something that she took into account.

14           THE COURT: As part of the proposed -- what is the  
15 jury instruction going to ask the jury to look at when it  
16 considers whether or not Hunter Douglas acted reasonably? This  
17 is a negligence design case, right?

18           MR. JAUREGUI: That's correct.

19           THE COURT: So the jurors have to consider obviously  
20 first of all it's in the framework of common-law negligence,  
21 duty to breach thereof, and injury. Is a jury instruction  
22 going to instruct the jury that they should consider a number  
23 of factors to determine whether or not the defendant acted  
24 reasonably or unreasonably?

25           MR. JAUREGUI: Well, I didn't bring the jury

1 instructions with me, Judge.

2 MR. SANTIAGO: Judge --

3 MR. JAUREGUI: Mr. Santiago was the drafter of that  
4 jury instruction.

5 MR. SANTIAGO: There is one jury instruction that's  
6 disputed. And it essentially says, the plaintiff may establish  
7 that a product is unreasonably dangerous by showing that there  
8 was a reasonably feasible alternative that didn't change  
9 functionally, blah, blah, blah. Almost like the risk utility  
10 analysis.

11 They haven't proposed an alternative to it, but they  
12 object to it. They don't think it's a proper statement of the  
13 law in Illinois. We do. And I know there are other ones out  
14 there that we can probably use as well that might inform the  
15 jury as to the different elements, because there are elements  
16 that the Court -- and most of them center around, by the way,  
17 whether the alternative design was feasible and cured the  
18 problem altogether.

19 THE COURT: So the one proposed by the plaintiff is  
20 based upon the utility --

21 MR. SANTIAGO: Right. But in Illinois, though, Judge,  
22 we can use that, and we can use another -- there is another.

23 MR. JAUREGUI: Consumer expectation.

24 MR. SANTIAGO: Consumer expectation test.

25 THE COURT: I --

1           MR. WILLIAMS: But that's a strict products liability  
2 test. That is not a negligence test.

3           MR. SANTIAGO: That's disputed.

4           THE COURT: I know it's disputed. I think the Seventh  
5 Circuit has spoken on that pretty recently on whether or not it  
6 is only for strict product liability or whether or not it can  
7 be -- it has some utility in the negligence design case.

8           MR. SANTIAGO: The modern risk utility test takes  
9 elements of that in it under even Jabonski (phonetic).

10          THE COURT: And I don't mean to get us off on a side  
11 track here. And I know that we will address jury instructions  
12 when the time comes. I am just trying to figure out what the  
13 jury is going to be asked to consider when it makes its  
14 determination of whether or not the actions were reasonable.

15          And frankly, in certain cases, the jury isn't supposed  
16 to be given any instruction as to reasonableness because I  
17 think the thought is that that is something the jury needs to  
18 assess based upon the jury's own common experience.

19          But again, it was just -- I was just in the process of  
20 thinking about it. And the argument kind of raised that,  
21 raised that in my mind.

22          Mr. Williams, do you have something to add?

23          MR. WILLIAMS: Yes, to jump in really quickly and  
24 interrupt and give Mr. Jauregui some more time to help you  
25 focus on that. There are competing jury instructions on this

1 issue. With respect to our jury instruction, we have one that  
2 says, plaintiff has the burden of proving negligence in the  
3 design of the product in one of two alternative ways. The  
4 first is deviation from the standard of care. And the second  
5 is that we should known -- knew or should have known in the  
6 exercise of ordinary care that the product was unreasonably  
7 dangerous, which is language that you heard a lot from Dr.  
8 Wright yesterday and would hear from Mr. Statler as well, and  
9 Mr. Santiago argued to your Honor yesterday. I will address  
10 that in a minute.

11 But with respect to Dr. Ray, the reason I jump up and  
12 interrupt is, her proposal, her proposed testimony, goes to the  
13 question of reasonable safety, reasonable risk.

14 THE COURT: I understand that's defendant's argument,  
15 and you will have a chance to voice that. Thank you.

16 MR. SANTIAGO: One other thing, Judge, that's not one  
17 of the elements that's considered in the risk utility test.  
18 Rate of injury is not -- I've never seen it in the case law.  
19 But I could be proven wrong.

20 MR. WILLIAMS: We are --

21 THE COURT: I --

22 MR. WILLIAMS: -- jury instruction with rate of injury  
23 in it, your Honor.

24 THE COURT: I look forward to discussing that issue  
25 when the time comes.

1           MR. JAUREGUI: Judge, I -- we would not have any  
2 problems with Dr. Rose's testimony in this case if she had gone  
3 out and talked to Hunter Douglas and said, you know, what is  
4 the rate of injury with the products that you offered to the  
5 consumer? What kind of data do you have? How many people --  
6 how many kids have been strangulated from vertical blinds? How  
7 many people have been strangulated from any of your products?

8           And then if she had compared that, the data, the data  
9 of strangulation from vertical blinds to strangulations from  
10 horizontal blinds, Venetian blinds, or any other type of blinds  
11 that have a cord, we would be okay because then Dr. Ray would  
12 be using a -- an appropriate comparative analysis of like  
13 products. She has not done that here.

14           I consider getting a statistician to rebut her  
15 testimony. But I didn't think it would be wise to spend the  
16 money on that because the issues -- the comparisons that she is  
17 making in this case, that the rate of injury from products that  
18 have nothing to do with a product that has a hidden risk, that  
19 the U.S. Consumer Product Safety Commission has already labeled  
20 it as such, it's totally inappropriate, Judge. There is just  
21 no basis for that opinion.

22           There is -- she may have all the statistical  
23 background. She may have the scientific background. But her  
24 methodology does not apply to this case. This is not a case  
25 where she should be allowed to testify.

1           We have other problems with the sampling that she  
2 chose also. She has limited the size of her sample in this  
3 case to children between zero to three years of age. The  
4 commission -- most of the studies in the commission did use the  
5 age bracket of zero to five years because that's where most of  
6 the strangulations occur within that age bracket.

7           She also limited her study here, her sampling, her  
8 statistical sample, to the period of between 1990 and 2007.  
9 There are many other strangulations, at least a hundred other  
10 strangulations, that have taken place prior to 1990. She did  
11 not take those into account. And the reason why she didn't  
12 take those into account, there are a couple. They are twofold.

13           One was that prior to 1990, she didn't think that the  
14 Consumer Product Safety Commission had good data keeping. And  
15 two, she -- she just felt that it was more relevant to use that  
16 data here for this type of analysis.

17           So the question is then, if she is not using products  
18 that have any similarity whatsoever to the -- to the window  
19 covering cord, she is not using an appropriate sampling as a  
20 statistician because she has not chosen the -- all the -- all  
21 of the -- all of the data that we know of as of today that is  
22 available from the Consumer Product Safety Commission, then  
23 that's really not a valid statistical analysis that she is  
24 trying to use in this case.

25           Now, she also mentioned -- mentions in her report that

1 the number of fatalities have been decreased in the recent  
2 years. But she doesn't explain why they are being decreasing.  
3 Is it because now there are more vertical blinds with wands out  
4 there? And that would be an important factor to consider.  
5 Whether or not the increase of vertical blinds with wands --  
6 whether or not that has decreased the risk of the injury in  
7 this case, the rate of injuries in this case.

8 I asked Dr. Ray in her deposition whether or not she  
9 had any idea of how many vertical blinds with looped cords,  
10 such as the one at issue in this case, are in American homes  
11 today. She had absolutely no idea. She doesn't know how many  
12 vertical blinds with cords are out there in American homes.

13 And I asked her, would that kind of number statistics  
14 be relevant for you when evaluating the risk of injury? Her  
15 answer, no. Why is that? Because my study is for the risk of  
16 injury associated with window shades and Venetian blinds, not  
17 specific to vertical Venetian blinds.

18 THE COURT: Did she look at window shades and blinds  
19 generally? Or did she focus on -- did she focus at all on say  
20 ones with looped cords or vertical blinds or ones in bedrooms  
21 versus living rooms?

22 MR. JAUREGUI: According to her report and her  
23 testimony, she said that she focused on window shades and  
24 Venetian blinds, but not specifically -- not specifically  
25 vertical blinds. So generically I guess she was saying that

1 she looked at all the window coverings in one swoop.

2 Judge, at this point I am going to reserve whatever  
3 time I have left for rebuttal. The arguments that we laid out  
4 in our opening brief and our reply brief I think for the most  
5 part adequately address our challenges to Dr. Ray's -- not to  
6 her qualifications but rather to the methodology that she used.  
7 That's simple. I know, I am not using most of my time, and I  
8 know the Court doesn't have any problem with that.

9 But the issue is that the items that she is using are  
10 not even remotely similar to the -- to window coverings and  
11 the -- whether or not any of those items pose a risk of  
12 strangulation, any recalls, whether or not they had any  
13 defects, whether or not the danger is open and obvious. None  
14 of those issues are relevant.

15 And because of the -- you know, for all of those  
16 reasons, the analogy, the extrapolation that she's trying to  
17 make from the rate of injury from chairs, tables, beds, has  
18 absolutely nothing to do as to whether or not the particular  
19 window covering in this case is unreasonably dangerous or was  
20 unreasonably dangerous at the time it was sold to Ms. Davis.

21 THE COURT: Okay. Thank you.

22 MR. WILLIAMS: Thank you, your Honor. Good afternoon.

23 It's hard to know where to start on Dr. Ray.  
24 Plaintiffs are contending in this case that Hunter Douglas was  
25 negligent because it continued to manufacture what they contend



1 was an unreasonably unsafe product when a safer product was  
2 available. We heard ad nauseam from Dr. Wright yesterday and  
3 you will hear throughout this trial the claim that Hunter  
4 Douglas was at fault here, liable here, for continuing to  
5 manufacture the corded window coverings. And that's how this  
6 case has evolved.

7           When it started out, before plaintiff realized that  
8 Hunter Douglas did manufacture the PermAssure wand and make it  
9 available at this time, the claim was that we had done nothing.  
10 Now when they learned that we in fact had that option, they  
11 shifted course and made the argument that we had an obligation  
12 to provide only the safest product.

13           Mr. Santiago stood up yesterday before you and argued  
14 very vehemently that the law in Illinois is that a manufacturer  
15 has an obligation to provide consumers with the safest product  
16 it can. And Brian and I sat there and made note to go back and  
17 correct the record on that. And the -- there are a raft of  
18 cases. I'll direct your Honor's attention to a handful of  
19 them, recently in -- actually Illinois Supreme Court case back  
20 in 1979, Kerns versus Engelke, E-n-g-e-l-k-e, 76 Ill.2d, 154 at  
21 page 166, the Court sets forth the rules:

22           Our decision must not be construed as holding that the  
23 absence of the safest design is unreasonably dangerous as a  
24 matter of law. A manufacturer is not required to produce a  
25 product which represents the ultimate in safety. Citing a

1 string of cases that came before then.

2 More recently, the Court of Appeals in Illinois in a  
3 1988 decision, Cornstrubble versus Ford Motor Company, 178 Ill.  
4 App. 3d at 20, at page 32, summarized the law in Illinois as  
5 follows. And this is particularly applicable in this case  
6 because the cause of action involved there was also a  
7 negligence cause of action.

8 The Court said: Under a theory of negligence, a  
9 manufacturer does not have the duty to provide the safest  
10 product, but only a reasonably safe product. Dr. Harrenstien,  
11 one party's expert, the plaintiff's expert -- Dr. Harrenstien's  
12 testimony did not establish defendant's failure to exercise  
13 reasonable care in designing in that case the gas tank step  
14 system in question, steps up and down to the cab of a big rig.

15 And this Court, Judge Norgle, back in 1996 in the case  
16 of Navarro versus Fuji Heavy Industries Limited, 925 F.Supp.  
17 1323, Northern District, of course, Eastern Division, in a  
18 decision that involved both a ruling on a Daubert challenge as  
19 well as a motion for summary judgment, Judge Norgle granted  
20 summary judgment to the defendant and summarized the law in  
21 Illinois as follows:

22 The duty to manufacture reasonably safe products  
23 demands neither the safest design possible, nor a design  
24 incapable of causing injury. Again, citing other Illinois  
25 cases for that proposition.

1           Counsel simply misrepresents the law in Illinois. And  
2 the reason that Dr. Ray is in front of you this afternoon is  
3 because she has been asked by us to address a very limited,  
4 very focused question. The jury is going to be asked to decide  
5 whether this product's design, the corded, continuous-loop cord  
6 operating system on this vertical blind, was an unreasonably  
7 dangerous product.

8           That involves weighing. That involves balancing.  
9 That involves having a context. And to give the jury any  
10 opportunity to figure out what a reasonably safe versus an  
11 unreasonably safe product is, a comparative risk analysis is  
12 appropriate. I -- I --

13           THE COURT: Mr. Williams, let me ask you this:  
14 Could -- Dr. Ray, I think it is? Could Dr. Ray include in her  
15 elements of comparative risk analysis the risk of getting into  
16 an auto accident, or the risk of being hit by lightning, or the  
17 risk of being, I don't know, hit by a baseball attending a  
18 baseball game -- I mean, all those things are risks that we  
19 face when we go out into the world.

20           Why would -- is it your position that those risks  
21 could also be included in an analysis of comparative risk  
22 because those are things that people and the jury will know  
23 about and will give them an ability, according to defendant's  
24 theory, to weigh that risk with the risk at issue here  
25 purportedly. Is that defendant's position?

1           MR. WILLIAMS: If I understand the question, your  
2 Honor, at least no in part. I will walk through in a minute  
3 some of the risk analyses that she could do that she has  
4 specifically not done because she doesn't believe they are  
5 relevant for this case. She is focused on products, consumer  
6 household products, that a child is likely to be exposed to.  
7 She has driven it down as narrowly as possible to make it  
8 relevant to this lawsuit.

9           Going for a walk, being hit by lightning, are risks in  
10 everyday life. But we don't evaluate whether a manufacturer of  
11 that lightning was negligent or not. And so that's not  
12 something that she would have to consider.

13           She also doesn't think it's relevant to consider for  
14 these purposes risks that a child age zero to three wouldn't be  
15 exposed to. She is limited to that, because that's the --  
16 that's the comparison basis. And I'll talk in a minute about,  
17 this isn't Dr. Ray's invention. The CPSC does this all the  
18 time, compares different types of products because of their  
19 potential exposure to the same population in determining what's  
20 a reasonable level of risk or not.

21           Plaintiffs want to simply say, 110 or 170 deaths and  
22 this is terrible and every one is awful. And, therefore,  
23 without more you should find Hunter Douglas negligent by  
24 putting on the market basically a product that could cause this  
25 type of an injury or death one time. And if we are not allowed

1 to put in perspective, and they can cross-examine the heck out  
2 of her, but put in perspective the level of risk posed by  
3 corded window coverings when compared to other products that  
4 people have experience with and have the ability to compare  
5 these window coverings to, then we are basically at their mercy  
6 to come in and say, because Max Padilla died, therefore, this  
7 product was unreasonably dangerous.

8 THE COURT: But don't juries -- I mean, don't juries  
9 make reasonable determinations all the time, every day, in this  
10 building without the aid of any sort of comparative risk  
11 analysis? As I understand it, what you are trying to do here  
12 is, what you are saying is, look, juries need to get a -- they  
13 need to have provided some perspective on what the risks of  
14 death are in comparison to the product at issue, versus other  
15 products that they would come into contact with, right?

16 MR. WILLIAMS: Good characterization.

17 THE COURT: And so it's not -- when in that context,  
18 the chances of a zero to five year old being hit by a car would  
19 be, quote unquote, as relevant as their suffering injury due to  
20 a chair at the house because the sole basis for her opinion is  
21 to provide -- according to defendant, is to provide the jury  
22 with a comparative basis of risk of things that they know that  
23 children would be exposed to.

24 So in that sense, in context of that argument, any  
25 risk that a child of zero to five would be exposed to would be

1 relevant because it would arguably give the jury an additional  
2 comparator.

3 MR. WILLIAMS: You might argue it be relevant. I  
4 would say that it's less relevant than what we've done here.  
5 And we've done a much more narrow focused approach. Dr. Ray  
6 has at my request -- and as I'll just in a minute. Every --  
7 every step of the way I asked her to take the most conservative  
8 position, assume the variables that place the greatest weight  
9 in the category of injuries we are talking about here.

10 For example, counsel says she didn't limit it to  
11 vertical blinds. That's because counsel is saying that a loop  
12 is a loop is a loop. And in general the risk of corded window  
13 coverings is such that that's what you should look at. So I  
14 instructed her, don't choose the small subset of vertical  
15 blinds. Use all of the corded window coverings, which gives  
16 you the largest number of injuries and deaths, which gives you  
17 the highest incidents, so that it would not be vulnerable to a  
18 complaint like that.

19 And sure you can say at some level it gives the jury  
20 some perspective to say, well, let me compare corded window  
21 coverings to my child walking to the bus stop in the morning to  
22 go to school. And aside from the fact that three year olds,  
23 you know, don't typically walk to the bus stop by themselves to  
24 go to school, the reason I -- not so much I didn't ask her to.  
25 But she -- she does this all the time and does this in court

1 all the time, as I will correct in a minute.

2           The reason that she doesn't want and doesn't think  
3 it's appropriate to do that broad a comparison is because she  
4 thinks the more -- the more focused it is on products that are  
5 available to be purchased and sold and consumers have choices  
6 with respect to, the more relevant it is to a product case that  
7 we are involved in here today, where consumers likewise are  
8 going out into the marketplace, making choices, and -- and  
9 making decisions based upon what they think is best for them  
10 and their families.

11           THE COURT: Okay.

12           MR. WILLIAMS: And I -- really given your concern  
13 there, I am going to ask the Court to liberally interrupt me  
14 because I want to answer your concerns. I don't want to stay  
15 off them. If you got things you want me to focus on, I want to  
16 do that.

17           Let me try to --

18           THE COURT: Okay. At that invitation, if she focuses  
19 on blinds generally, which includes uncorded blinds,  
20 wouldn't -- I mean how is that relevant to this case? Because  
21 couldn't that -- that can work in -- that can work the numbers  
22 either way. We don't know which way. And so why is that  
23 analysis relevant or helpful to the jury here?

24           MR. WILLIAMS: Not uncorded. Did you mean horizontal  
25 versus vertical?

1 THE COURT: Yes.

2 MR. WILLIAMS: Once again, because it maximizes the  
3 incident rate. In other words, it takes the plaintiff's  
4 argument that it's too fine a distinction, Mr. Williams, or  
5 Hunter Douglas, to make between a vertical blind cord and a  
6 horizontal blind cord. You heard about the different functions  
7 but, yes -- to play devil's advocate and take their argument,  
8 for all it's worth. If you had two products, both of which had  
9 continuous loops, and one had these slats and one had these, it  
10 doesn't make any difference. That cord sitting there is the  
11 same roughly level of risk.

12 So she included all of the data to include the  
13 hundreds that would have been scores and not hundreds if she  
14 had limited it to vertical blinds, so as to not to be unfair.  
15 I mean, I am very sensitive to the -- there are three kinds,  
16 you know, lies, damn lies and statistics complaint. And I  
17 wanted to make sure that she was extremely cautious and  
18 extremely deferential to, you know, the plaintiff's position in  
19 this case in the assumptions that she made.

20 So every step of the way, as I will try to  
21 demonstrate, she assumed all products, not just these, let me  
22 respond right now, to the only zero to three year old  
23 population. The CPSC has statistics. Five, six years old is  
24 about as old as we see these tragedies occur to. It's  
25 typically children between zero and three. Max was three.



1           You -- once again, if you took a population of zero to  
2 five, that is going to be fewer four and five year olds getting  
3 involved in injuries, which is going to produce a lower rate.  
4 And, therefore, you are going to skew the incident rate  
5 downward. So I asked her to focus on the population of zero to  
6 three, A, because that's a population that includes Max  
7 Padilla; and B, because that gives the highest incident rate.

8           Including any more years, counsel's argument that she  
9 should have included more, I wish he would have told me that  
10 before she did her report, because the incident rate would have  
11 been lower.

12           So that's another example of the ways in which she in  
13 part at my direction, in part because that's what she does, was  
14 very careful to only rely on the most pristine data and make  
15 assumptions that were in her opinion fair or more than fair in  
16 this case.

17           THE COURT: Let me ask you another question.

18           MR. WILLIAMS: Sure.

19           THE COURT: Putting aside the question about whether  
20 or not they are fair comparators. When you look at what the  
21 jury is going to be asked to determine, the jury is going to be  
22 asked to determine with regard to the blinds at issue here,  
23 right, was Hunter Douglas reasonable or unreasonable? Okay.  
24 And part of that is looking at the risks of the incidents of  
25 mortality and injury. The other side will be looking at costs,

1 feasibility, functionality all those things that we talked  
2 about.

3           How does knowing one number, that is the risk, of a  
4 totally unrelated product, right, devoid of any sort of  
5 analysis as to functionality, costs, feasibility, with regard  
6 to those products, help the jury decide reasonability with  
7 regard to the blinds?

8           MR. WILLIAMS: Simply because it's a matter of common  
9 experience. I understand your point, and it would be more  
10 perfect if they knew how much it cost to manufacture one kind  
11 of chair versus another kind of chair or one kind of glass door  
12 versus another.

13           THE COURT: Simply because in one aspect -- and we can  
14 talk about hypotheticals. Hypothetical A, you know, a risk of,  
15 I don't know, .003 percent, right, might be reasonable. But  
16 another hypothetical for another product that might be  
17 completely unreasonable. And so how does giving that number in  
18 and of itself help the jury make a reasonable determination  
19 with regard to this case?

20           MR. WILLIAMS: Because the jury has a background, a  
21 basis for in common experience evaluating, okay, how much safer  
22 could you make a bathtub? Or how much safer could you make a  
23 bucket or pail. More children drown in buckets or pails, not  
24 bathtubs, buckets or pails, than die on window coverings.

25           A jury has a basis for saying, a glass door, if it's

1 going to be glass, if you can see out of it, can only be made  
2 so safe. So they have a common experience there to take those  
3 incident rates and say, hey, you know, we need chairs. So even  
4 though that's a high number, you know, to me it's -- it's  
5 reasonable that we continue to have those.

6 But it's -- if we don't have this kind of information  
7 through Dr. Ray, the plaintiffs are going to come in here and  
8 try to put blinders on every member of this jury and have them  
9 focus on one window blind and one little boy who's now  
10 deceased, and the tragedy that one family has endured and say,  
11 looking backwards to 1995, Hunter Douglas sold this product  
12 that ended up producing this result.

13 And if they are allowed to do that without our ability  
14 to -- basically it's fleshing out, your Honor, what you touched  
15 on yesterday with Dr. Wright; and that is, there is risk in  
16 many things we do. And there are tradeoffs. And there are  
17 very few things that are perfectly safe.

18 Dr. Wright has no idea how frequent the rates of  
19 injury are here. Part of the need for Dr. Ray is, you heard  
20 him yesterday. He doesn't know if there is a hundred thousand  
21 or hundreds of thousands, he said, or a billion. He had no  
22 idea. It wasn't important to him. He wants to come in here  
23 and say, one death is too many. And, therefore, a product that  
24 caused one death is a defectively designed and unreasonably  
25 dangerous, negligently designed product.

1 Dr. Ray is really critical to our ability to say,  
2 let's look at the whole picture. Let's be fair. And as I say,  
3 she will -- she will do it in careful, painstaking detail. And  
4 I think -- I think now -- keep interrupting if you like, but it  
5 would be helpful to you if I walk through what she will do at  
6 trial.

7 First of all, it is Dr. Ray. It's not Dr. Rose.

8 In responding to plaintiff's claim that there was an  
9 unreasonable risk of injury that was created by Hunter Douglas  
10 offering corded window coverings in 1995, they want to stand up  
11 and discuss the number of injuries and deaths and basically  
12 stop there. By this motion, as Mr. Jauregui says, they're  
13 seeking to prevent the jury from hearing any context, or as you  
14 say perspective, to put those accidents in or hold them up to.  
15 In order to have any basis to determine whether the risk of  
16 injury or death posed by this product was an unreasonable  
17 one -- and we have to look at it in 1995, not 2013, after it's  
18 been involved in Max Padilla's death -- they have to have that  
19 context.

20 Dr. Ray's analysis is very specific and very narrow.  
21 She takes, as I said, population of zero to three. And I  
22 explained the reason she did that. That's the relevant  
23 population. It's also the one that produces the highest  
24 incident rate.

25 She then compares that rate of injury for three

1 different time periods, and counsel commented on that. He  
2 actually commented on one. She only looked at 1990 through  
3 2000. She started with 1990 because the information available  
4 before then was less reliable, spottier, and in all likelihood  
5 would tend to underrepresent the incidents. So 1990 is the  
6 beginning of what she believes is the quality level of  
7 information.

8           She then went to two different dates going forward.  
9 She went to 1993, which would be the last date that would have  
10 been available if Hunter Douglas had known all of this  
11 information -- available to it in time to design and  
12 manufacture product in 1995. So she did an analysis up through  
13 1993.

14           Then she did another one from 1990 to 1995, basically  
15 assuming sort of fictionally that the time this was designed  
16 Hunter Douglas knew of every incident that was out there, even  
17 without any time lag. And then finally she did the period from  
18 1990 to 2007, the last complete year of information before  
19 Max's death in 2008. So those were the three time periods that  
20 she did.

21           She then did two analyses for each time period. The  
22 first one was deaths to children associated with these selected  
23 window products. I don't know if you have her report handy,  
24 your Honor. I can hand you a copy if you like one.

25           THE COURT: I have it. Thank you.

1           MR. WILLIAMS: And so the table you see here sets  
2 forth the various products that she compared it against. And  
3 what's important is, down at the bottom the information that  
4 she relies upon, her source material, because counsel has for  
5 some reason chosen to criticize it. And so I am going to point  
6 out why that's not a good idea.

7           She relies exclusively on data from the NEISS database  
8 maintained by the CPSC, as you heard the best information  
9 that's available, and with respect to the various exposures.  
10 So the NEISS database gives you basically the numerator. It  
11 tells you how many incidents there have been of deaths  
12 involving beds, buckets, window shades, et cetera that gives  
13 you your numerator.

14           She then has to have a denominator. And she,  
15 therefore, needs to be able to calculate the number of  
16 exposures that children would have to each of these products.

17           So she sets forth in the next page, behind the nice,  
18 readable by attorneys bar chart, she sets forth a table  
19 containing the same data. But it shows not only the deaths, in  
20 this column the numerator, but also the population. And she  
21 explains below there, and I won't belabor it now, the source  
22 for each of her population. She has to have reliable  
23 information to show how many exposures there are to beds, how  
24 many to window blinds, et cetera.

25           So all of that is set forth in her report that's been

1 in counsel's hands for over two years. And she takes that  
2 scientific methodology. And she applies it and then breaks  
3 down deaths to children zero to three years old. And then  
4 separately she prepared a parallel table for each time period,  
5 showing the rate of injuries and deaths combined. So the only  
6 difference here is, she adds in injuries.

7 And what you see here is that window shades is at the  
8 bottom of the scale. And the reason for that is when there is  
9 an accident involving window shade, a higher portion of  
10 fatalities. So when you add in the injuries, there aren't that  
11 many more to add in.

12 So she goes through. She performs that analysis. And  
13 she explained in her report and in her deposition the reasons  
14 that she selected the products that she did. If you continue  
15 to look to her report at Appendix C, she actually gives us, and  
16 you in particular, some information with respect to fatality  
17 rates that she did not include to again provide additional  
18 perspective.

19 I would not propose to offer this to the jury. But  
20 for your purposes to see how selective she has been, you know,  
21 the accident or the deaths per 100,000 population for motor  
22 vehicle accidents is 16.7. Back on that bar chart, the rate  
23 for children's deaths with the highest incidents on beds was  
24 not even three.

25 So obviously there are bigger fatality rates that she

1 could be comparing things to. She is not doing that here  
2 because she doesn't believe that motor vehicle incidents or  
3 falls or poisonings or fires are as relevant as the products  
4 that she selected.

5 So she has been very selective in what she has chosen  
6 to present to the jury. We are not bringing in everything that  
7 we could.

8 Plaintiff's opposition is that -- is several things.  
9 One of their arguments is that she's chosen products that don't  
10 cause strangulation. You didn't hear that today, but that's in  
11 their brief. That's silly. She's choosing products that can  
12 kill children by any means.

13 You also heard that she didn't base her analysis on  
14 other products that were either defective products or that had  
15 latent defects. That's what we are here to decide is whether  
16 there was an unreasonably dangerous product. That's the cart  
17 before the horse in the worst possible way. That's what the  
18 jury is going to be asked to consider here.

19 They argue that this is not related to matters growing  
20 naturally out of research that she's done independent from this  
21 litigation. She has been doing that. She has been published  
22 for over 20 years.

23 But more importantly, the NEISS database is a database  
24 that's used by the CPSC and other agencies to perform  
25 comparative risk analyses all the time. As Dr. Ray said in the



1 affidavit that she supplied in connection with our opposition  
2 in this case, that we refiled again this past May, she explains  
3 that the Consumer Product Safety Commission does comparative  
4 risk analyses, for example, comparing the risk associated with  
5 chain saws as opposed to walk behind power mowers. Or the risk  
6 of drowning in a home swimming pool for children under age five  
7 was compared by the CPSC to the risk of death for children  
8 under age five in motor vehicle crashes, all of them accidents  
9 in spas.

10 That's what a comparative risk analysis is. And it's  
11 a tool not developed for litigation. It's a tool that's used  
12 by scientists who look at products and look at safety of  
13 products and look at how to make products safer. And it's  
14 simply one that she has done in a way that plaintiff's counsel  
15 can't challenge. Not only her qualifications but her  
16 methodology are, I think, as tight as can be.

17 But your Honor seems concerned about whether there is  
18 any underlying relevance to this at all, which I am a little  
19 surprised at, but I want to try to respond to. Counsel  
20 suggested that in his deposition she asked her if she ever  
21 testified to this type of analysis in trial. And she said she  
22 had not. I -- I am trying to be patient with the confusion  
23 that we have sometimes. But I have a hard time when your Honor  
24 has things misrepresented to him.

25 In her affidavit submitted back in 2011, and refiled

1 again back in May of this year, Dr. Ray lists at paragraph 4  
2 about 15 cases in which she says, I testified as an expert  
3 witness in numerous jurisdictions throughout the United States  
4 on issues similar to those I have been asked to address here.  
5 Specifically I was qualified as an expert in a court of law on  
6 statistical analysis in at least the following lawsuits, all  
7 but two of which involved comparative risk analysis. She lists  
8 those lawsuits.

9           It's disingenuous, it's dishonest, to represent to the  
10 Court that she has never been allowed to testify as an expert  
11 on precisely this subject before because that's what she does  
12 all the time. And she's allowed to do it all the time because  
13 other courts have recognized that having that context, having  
14 that perspective, is helpful to a jury.

15           It doesn't mean that because there are other products  
16 that are more risky or less safe than window blind cords, that  
17 ipso facto window blind cords are safe. But it gives the jury  
18 some context. It allows them to take the blinders off and to  
19 evaluate the risk here.

20           And we can put up numbers just of window blind cords.  
21 But a jury is going to sit there and scratch their head and  
22 say, well, okay, this many per hundred thousand, or this many  
23 per 10 million. But how does that compare to things that I  
24 know?

25           What Dr. Ray will do very carefully and very

1 conservatively is answer that question for the jury. And  
2 that's why I believe she not only meets the Daubert standard.  
3 I don't think there is any question that her qualifications and  
4 methodology do that. But I believe she provides a very, very  
5 important, relevant item of information that the jury simply  
6 needs to have in this case. Or they're going to have no  
7 perspective with respect to judging the reasonableness of this  
8 risk or not.

9 THE COURT: Okay. Thank you.

10 Rebuttal?

11 MR. JAUREGUI: Thank you, Judge.

12 I'd like to clear something up at the outset. I have  
13 known Mr. Williams for the last three years since we have been  
14 working on this case, putting up with each other. And one time  
15 he was even kind enough to give me a ride to the airport. So I  
16 greatly appreciate that.

17 But I do resent him accusing me of dishonesty in front  
18 of the Court as to whether or not Dr. Rose had ever testified  
19 using the principles in this case. So let me put up her  
20 deposition. On page 181, there is -- let's start with page 180  
21 so we are fair here.

22 The first question there: Is the approach that you  
23 have taken in this case, the comparative risk analysis, that  
24 you are doing, it has -- it has never been either accepted or  
25 rejected by a court of law, is that correct?

1           No, that's not correct. This is a type of analysis --  
2 this type of analysis has been admitted in testimony in --

3           Question: I'm sorry, Doctor. I think I did not give  
4 you the proper question that I wanted to give you.

5           Mr. Williams: Can she just finish her answer?

6           Mr. Jauregui: Go ahead.

7           The Witness: I am mostly finished. I know that  
8 comparative risk analysis specifically of this type has been  
9 admitted in many courts of law by my own testimony.

10           I know that the very similar types of analysis have  
11 been admitted in courts of law by testimony of colleagues of  
12 mine, specifically colleagues that I am aware of.

13           There may have been many other places, but testimony  
14 by Jahup Padmanabhan, phonetic and testimony by Roger McCarthy  
15 has been admitted.

16           MR. WILLIAMS: Counsel, can we move the slide, so we  
17 can read along on the monitor. Thank you.

18           MR. JAUREGUI: There were -- let's see. Also probably  
19 William Wecker. There may be many others, but these are just  
20 the ones that I am personally -- that I personally know about.

21           By Mr. Jauregui, Question: Are these folks that work  
22 for Exponent also?

23           No, some of them once worked for Exponent. William  
24 Wecker never worked for Exponent.

25           Question: I guess my question was intended to be more

1 specific. So let me attempt it in this matter: The  
2 comparative risk analysis is that you -- that you have done for  
3 the rate of injury comparing the rate of injury to young  
4 children from window blind cords to the household common  
5 products that you have used, has that specific analysis  
6 comparing those products ever been either accepted or rejected  
7 by a court of law?

8 Answer: I don't know if a risk analysis using this  
9 commonly accepted methodology by specifically to these  
10 particular products has ever been presented in any way to a  
11 court of law.

12 Judge, we don't dispute that Dr. Ray is entitled to do  
13 a comparative risk analysis. She has every right to do that.  
14 But there have to be accepted methods of how she goes about  
15 doing that. And the way she has done that, it doesn't do that  
16 here.

17 She was retained in another case out of Florida. And  
18 in that case, she included -- that case never went to trial.  
19 And apparently she never testified. But in any event, she  
20 disclosed to me during her deposition that in that case she  
21 included all of the same items here, with the exception of  
22 pails. And I asked her, pails or buckets, why are you  
23 including that category here? Well, you know, it's something  
24 that is commonly found in the house.

25 Nothing else. We don't have absolutely any other

1 validation for her testimony that the only reason why she is  
2 using this analysis is because these are items that are found  
3 in the house.

4           Let me show you something here. Mr. Williams showed  
5 you that graph. And that graph represents the rate of injury  
6 for the various products that Dr. Ray is using in her analysis.  
7 And as it can be seen, window shades, Venetian blinds or indoor  
8 shutters, it's somewhere there. One, two, three, four, five.  
9 No. 5. It's a very small percentage, and the percentage has  
10 continued to decrease with regards to the other items.

11           So the question that I have here, and Dr. Ray is not  
12 here to answer it, and the question that the Court should be  
13 asking, is it that -- is it the reason that -- strike that.  
14 Did she even take into account when doing her analysis and  
15 using all of those items in the house of how many of those  
16 items were in the house? For example, how many beds, bathtubs,  
17 buckets, sofas, couches, chairs, glass doors, windows, doors,  
18 stairs, tables and coins. How many of all of those items are  
19 in a given household in relation to window blinds?

20           I mean, that seems to me that that -- if you are -- if  
21 she is not taking that into account, then her sample here, the  
22 extrapolation of the data that she is using here, has -- it's  
23 totally invalid. There is absolutely no basis for that kind of  
24 analysis here.

25           I mean, common sense would tell me that if you add up

1 all of those items in any household, you are going to find a  
2 lot more of those items in a household than you are going to  
3 find window blinds. And if that is the case, yeah, then a  
4 child is more likely to be injured by one of those items by  
5 virtue of the fact that there are more items than there are  
6 window coverings in the household.

7 Now a critical flaw in her analysis is that she did  
8 not take into account the foreseeability of injury in the --  
9 the foreseeability in the manner in which these deaths have  
10 been occurring in window covering blinds. It is foreseeable.  
11 Everyone -- you heard from the -- all of the expert witnesses  
12 that the manner in which children are strangulated is when they  
13 climb up on furniture and they attempt to look out the window.  
14 That's was -- that is one of the ways. It is foreseeable.

15 So when we're trying to -- when she's trying to  
16 determine the risk of injury that is posed by -- that is posed  
17 by a product that is dangerous, and she compares it to a  
18 product that is not dangerous, it's a comparison of apples to  
19 oranges, Judge. I don't see any valid analysis in this case.  
20 There is not a single case that defendants can cite to of all  
21 those cases that, you know, she has testified. There is not a  
22 single case where she has brought this type of analysis  
23 particular to this issue in this case.

24 And she has been around for 40 years. There has been  
25 quite a bit of litigation out there relating to window covering

1 cords. So this is the first time that they are trying to get a  
2 court of law to adopt this type of analysis for the proposition  
3 that when you look at these issues, the rate of injury, whether  
4 or not there is any similarity to the products, that there is  
5 really -- there is really -- that there -- that the rate of  
6 injury doesn't go up.

7 And I don't -- I can't put it in any other words to  
8 the Court other than it's just going to utterly confuse the  
9 jury. It doesn't answer the question of whether or not this  
10 particular window blind was unreasonably dangerous.

11 We are prepared to meet our burden to this Court and  
12 before the jury to show with the evidence that this particular  
13 window covering cord was unreasonably dangerous. There is some  
14 issues, some evidence, burdens of proof that we have to meet.  
15 But we cannot fight again all those statistics and let the  
16 jury -- give the jury the impression that because more kids get  
17 injured by chairs, therefore, you know, the window covering  
18 blind in this case is not dangerous.

19 It has nothing -- the rate of injury in determining  
20 whether a product is dangerous or not has nothing to do in the  
21 analysis under Illinois tort law.

22 THE COURT: Thank you, counsel. And thank you to  
23 everyone again today for the arguments that are very helpful.  
24 And I will go ahead and take a look at the motions and issue a  
25 ruling by mail.



1           Now the other thing I wanted to do today was set trial  
2 dates. So it also seems to me that the pretrial conference in  
3 this case, that it might be worth while to at least put aside  
4 two days for the pretrial conference so that we can deal  
5 with -- I like dealing with jury instructions beforehand,  
6 preliminarily. And so keep that in mind as well.

7           At this point in time -- and I was looking at my trial  
8 calendar during the break. The trial dates that I am looking  
9 at -- and again this is going to be two weeks I will set aside  
10 for a jury trial -- would be in January of next year. And so  
11 the dates I propose would be the week of January 19, and the  
12 week of January 26. I just want to give you an opportunity to  
13 check your schedules to see if that works.

14           The pretrial dates, the two days that we set aside,  
15 and actually what we would do is set aside two afternoons,  
16 would be the week before. That is the week of January 12.

17           MR. WILLIAMS: May I jump in to completely bollix up  
18 the works, your Honor?

19           THE COURT: Yes, of course.

20           MR. WILLIAMS: I shouldn't apologize but I will  
21 anyway. I have a two week trial set in Maricopa County, in  
22 Phoenix, on January 13. And if there were any realistic chance  
23 that it would settle any time soon, I would tell you that. And  
24 I don't know what your position is on double setting. I know  
25 typically judges sitting where you do are ready to go and try

1 to set aside a date unless there's a criminal matter in the  
2 way. And so I don't want to be in a position of trailing or  
3 keeping your Honor up in the air.

4 Right now the weeks of the 13th and 20th for me are --  
5 sorry.

6 THE COURT: No, that's why I wanted everyone here  
7 while we are setting these dates. As a practical matter, I do  
8 not like to double set dates, just because of the Speedy Trial  
9 Act. Criminal cases always end up unfortunately at times  
10 bumping civil trials. So I like to set trial dates for civil,  
11 keep them to the extent I can.

12 In this case, as I was reviewing the Daubert motions,  
13 I thought that it would be helpful to hear from -- have some  
14 live testimony with regard to a couple of the experts. And  
15 that's why I scheduled it the way I did.

16 So, counsel, your trial starts on January 13, is that  
17 what you said?

18 MR. WILLIAMS: It does, your Honor.

19 THE COURT: And it goes for two weeks?

20 MR. WILLIAMS: Maximum. I think similar to this one.  
21 I think it should be eight to ten day.

22 MR. JAUREGUI: Judge, if I can --

23 THE COURT: Yes.

24 MR. JAUREGUI: -- advise the Court, preparing for the  
25 trial, the near trial experience, we thought that perhaps the

1 case could be put on in about seven days. I don't know if  
2 Mr. --

3 MR. WILLIAMS: I don't disagree. I think we actually  
4 had talked about an eight-day as opposed to two weeks for  
5 whatever that matters. With a good two-day pretrial that  
6 should shorten the trial, I would hope.

7 THE COURT: What about March 10, the week of March 10  
8 and then going into the week of March 17? Are we going to run  
9 into spring break issues at that point?

10 MR. WILLIAMS: I have just been complaining recently  
11 about having my youngest graduate from college. So I am old  
12 enough to be not constrained by academic calendars. So that's  
13 not an issue at least on my side of the table. And right now  
14 for very different reasons it's not an issue for Mr. Watson.

15 MR. JAUREGUI: We are okay. We're fine with --

16 MR. WILLIAMS: I am pretty sure I don't have anything  
17 on my calendar, your Honor. I got a nagging feeling, but I  
18 don't think there is anything.

19 THE COURT: Let's go and set those dates then. So we  
20 will start on March 10. And I will set aside, just in case,  
21 the week of March 10 and the week of March 17. As far as the  
22 pretrial, let's do the pretrial in the last week of January.  
23 Does that work? Looking at the afternoons of the 28th and  
24 29th?

25 MR. WILLIAMS: Yes, that does here, your Honor.

1           THE COURT: Will that give you enough time after your  
2 trial?

3           MR. WILLIAMS: The work's been done, and I just think  
4 I am going to paralyze the system if I worry too much about  
5 having a nice leisurely break. So I will get myself here from  
6 Phoenix by the 29th on that.

7           Actually the only thing I want to mention, but not to  
8 request any change, is, those weeks of March 10 and 17 I have a  
9 trial on February 25. But I, A, believe that should be  
10 shorter, believe has a higher likelihood of success that I just  
11 don't want to.

12          THE COURT: You will have a busy spring, but that's  
13 probably both good and a bad thing. Good for your partners,  
14 not necessarily for you.

15          So let's go ahead and set the pretrial for the  
16 afternoon of the 28th and 29th of January. We will start at --  
17 let's start at 1:30 on those dates. If we can get through it  
18 all in one afternoon we will. If not, then at least we still  
19 have the second day.

20          MR. JAUREGUI: Judge, can I ask a rather difficult  
21 question here? Is there a -- I know at this point we don't  
22 know when the ruling we are going to get from the Court on  
23 these motions. But after we get your ruling, because it may  
24 impact on the pretrial order, the submissions to the parties,  
25 if we can have a period of time so that we can respond

1 accordingly to submit perhaps a revised pretrial order, and  
2 give you additional jury instructions. I don't know if it's  
3 appropriate at this time to consider that.

4 THE COURT: No, I think that one of the reasons again  
5 why I wanted this hearing is because I realize Daubert motions  
6 would have an impact, significant impact, on the trial if they  
7 were to be granted either in whole or in part. What I will do  
8 is, once we issue the ruling -- and my hope is to get them out  
9 sooner rather than later so that the parties can have the  
10 benefit of them. Sounds a little strange. But so the parties  
11 can at least review them.

12 What I will do is, we will have -- I will call a  
13 status hearing after the ruling has come out. At that point in  
14 time the parties can address to me -- and, Mr. Williams, since  
15 you are from out of town, you two are --

16 MR. JAUREGUI: We are here.

17 THE COURT: You can participate by phone if you  
18 wish --

19 MR. WILLIAMS: Thank you.

20 THE COURT: -- so long as someone from your Chicago  
21 office is here. And then the parties can talk about how they  
22 want to proceed based upon those rulings. And if the parties  
23 feel that some revisions of the pretrial orders will need to be  
24 made, then we can talk about it then.

25 MR. WILLIAMS: Your Honor, the only other items that

1 are I think worth noting now are, I don't believe there has  
2 been a ruling on plaintiff's motion to -- for a second amended  
3 complaint. That's pending and has been fully briefed. And  
4 then if you -- I am not sure if you put these over to the  
5 pretrial conference. We filed three motions in limine as part  
6 of the pretrial submissions three, four weeks ago. And those  
7 are pending as well. No opposition.

8 THE COURT: Yes, with regard to the motion to file  
9 amended complaint, you will have that ruling very shortly as  
10 well. And as far as the other motions in limine, we will  
11 address those as part of the pretrial conference.

12 MR. WILLIAMS: Thank you, your Honor.

13 MR. JAUREGUI: Judge, just advise the Court on that we  
14 have agreed to withdraw our strict warranty claims from the  
15 complaint. So there is no reason for the Court to proceed with  
16 that. We -- strict warranty. We had implied warranty and  
17 express warranty. So we have agreed to withdraw the express  
18 warranty as one of our counts of the complaint. If the Judge  
19 like me --

20 MR. WILLIAMS: Because you combine the two, strict  
21 liability has long since been stipulated to be dismissed. And  
22 counsel has informed, advised as to the express warranty claims  
23 also being dropped.

24 THE COURT: You should go ahead and file something.

25 MR. JAUREGUI: File a revised complaint with those --

1           THE COURT: No, what you should do is file a  
2 stipulation or an unopposed motion letting the Court know that  
3 you are going to be dropping that count.

4           MR. JAUREGUI: Very well.

5           THE COURT: With regard to the amended complaint, I  
6 have taken a look at the papers. And, you know, it's one thing  
7 if the plaintiff wants to amend the complaint to take out the  
8 parties who are now no longer part of this case, as well as the  
9 counts that are no longer at issue. There has, however, been a  
10 response by defendants that in fact there has been some  
11 substantive changes to the allegations because the allegations  
12 are somewhat intermeshed to some extent. And that's what we  
13 are looking at right now.

14          MR. JAUREGUI: Since we do not -- you invited  
15 defendant to file a response. We have not. We just filed a  
16 complaint. Can plaintiffs be allowed to file a response?

17          THE COURT: I don't think I will need a reply. I  
18 think it's simple enough. I just need to sit down and take a  
19 look at it. Very good.

20          MR. WILLIAMS: Thank you very much for the time.

21          THE COURT: Thank you. Thank you to both parties.  
22 Like I said, I think that the arguments were very helpful. And  
23 I appreciate your patience with the process.

24          MR. WILLIAMS: Your Honor, with respect to the  
25 exhibits that we used and identified, do you want them lodged,

1 filed electronically? What would you like?

2 THE COURT: I think that it would be helpful to have  
3 them filed as part of the hearing. And so what I would propose  
4 is, the parties can just do a joint filing of the exhibits that  
5 were -- and they are not really admitted, right? They were  
6 used. So you can call them exhibits used and referred to  
7 during the hearings on these dates. And go ahead and file them  
8 so they are part of the record.

9 MR. WILLIAMS: Thank you, your Honor. May I -- I  
10 think I handed you my original exhibit sticker with the  
11 PowerPoint, if I am correct about that? May I --

12 THE COURT: Yes.

13 MR. WILLIAMS: -- retrieve that? Thank you.

14 THE COURT: Also I do have a copy of the, What Is a  
15 Warning and When Will It Work. Can you go ahead and file that  
16 as well?

17 MR. WILLIAMS: Okay. Actually for the record, since  
18 you identified that and looked at that, may I request that it  
19 be marked as Exhibit 4 to Dr. Sala's Daubert testimony.

20 THE COURT: Thank you very much.

21 MR. WILLIAMS: Thank you, your Honor.

22 MR. JAUREGUI: Thank you, your Honor.

23 (Which were all the proceedings heard in this case.)  
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CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct  
and complete transcript of the proceedings had at the hearing  
of the aforementioned cause on the day and date hereof.

/s/Alexandra Roth

6/13/2018

\_\_\_\_\_  
Official Court Reporter  
U.S. District Court  
Northern District of Illinois  
Eastern Division

\_\_\_\_\_  
Date